

GNI Statement: E.U. Sanctions on Russian Broadcasters

Introduction

The Global Network Initiative (GNI) is writing to share comments on the human rights implications of the European Council’s sanctions on the broadcasting activities of five Russian state-owned outlets within EU territory (hereinafter, “broadcasting ban”).¹ GNI brings together over 80 prominent academics, civil society organizations, information and communications technology (ICT) companies, and investors from around the world. Members' collaboration is rooted in a shared commitment to the advancement of the [GNI Principles on Freedom of Expression and Privacy](#), which are grounded in international human rights law and the UN Guiding Principles on Business and Human Rights (UNGPs). For over a decade, the GNI Principles and corresponding [Implementation Guidelines](#) have guided ICT companies to assess and mitigate risks to freedom of expression and privacy in the face of laws, restrictions, and demands, including in politically sensitive contexts.

GNI [reiterates](#) its shock, opprobrium, and deep dismay about the unjustified Russian invasion of Ukraine. In addition to the physical attacks being perpetrated against Ukraine, the Russian government has taken active steps to undermine and restrict accurate information in Ukraine and Russia, as well as to spread disinformation and propaganda. GNI condemns all violations of the right to freedom of expression.

While recognizing that legitimate concerns exist around the flow of Russian disinformation and propaganda related to the war in Ukraine, GNI agrees with the concerns about the broadcasting ban outlined in freedom of expression Special Mandate holders’ [Joint Statement](#) on Russia’s invasion, including the danger of the EU’s ban being used by other countries as a pretext or justification to restrict access to independent media outlets. These sanctions in their current form

¹ Official Journal of the European Union, L 153, 3, Annex VI, June 2022.

could also be invoked to justify broader limitations on freedom of expression, potentially resulting in increased crackdowns on speech and access to information in other contexts.

GNI is aware that the EU periodically reviews sanctions regimes and that it recently adopted a sanctions “Maintenance and Alignment” package.² GNI offers the following views and recommendations, which we hope will inform the next round of review of the broadcasting ban in order that they might better align with EU values and commitments related to freedom of expression.

Human Rights Standards for Restrictions on Freedom of Expression

As the European Union has long maintained, where states seek to block content, it is paramount that such orders meet international human rights standards, specifically that governments bear the burden of demonstrating that they have met the rigorous three-part test of legality, legitimacy, and necessity outlined in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) (i.e., restrictions must (1) be clear and not overly broad, (2) be imposed for a legitimate public interest objective, and (3) be necessary and proportionate to achieve that objective). Demonstrating conformity with these principles is important not only for ensuring the protection of freedom of expression inside the European Union, but also for strengthening the EU’s and Member States’ ability to “pro-actively advocate for innovation-friendly and human rights-based technology governance and promote the EU’s human-centric and human rights-based approach to the digital transition.”³

² “Russia’s aggression against Ukraine: EU adopts ‘maintenance and alignment’ package,” *Consilium*, July 21, 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/07/21/russia-s-aggression-against-ukraine-eu-adopts-maintenance-and-alignment-package/>.

³ General Secretariat of the Council Delegations, “Council Conclusions on EU Digital Diplomacy, 11259/22, July 18, 2022, 11.

Legality

The first part of the test, among other things, means governments must provide clear, consistent, comprehensive, and timely guidance on precisely what content is meant to be blocked and in what forms and/or across what mediums and services it is meant to be blocked.

In addition, restrictions on freedom of expression “must provide sufficient guidance to those charged with [the restrictions’] execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”⁴ Companies operating in the EU have struggled to obtain the clarification and guidance necessary from governmental authorities to understand if they are properly implementing the sanctions and gain an understanding of enforcement protocols. For example, it is currently unclear how operators should handle the re-appearance of replica websites from sanctioned broadcasters, which are set-up to circumvent the sanctions.⁵ The current lack of guidance and specificity when it comes to the sanctions is leading to a fragmented approach across Member States.

In addition, the unpredictability of how companies may be punished for failing to fully comply with the sanctions may encourage companies to over-block content. Where Member State authorities lack the competence to provide such clarification, the EU should provide such clarity itself. To ensure guidelines are clear and accessible to all, GNI recommends that the EU publish clear, detailed, and accessible guidance on what content should be blocked and provide a point of contact for companies to reach out to when questions arise.

As GNI has noted, when states pursue regulations that limit speech, they should engage in an inclusive and participatory process that considers “diverse and expert inputs, based on empirical analysis, and accompanied by impact assessments.”⁶ We are encouraged by the EU Commission’s decision to engage in a periodic review of its sanctions against Russia. Between now and the next review, the Council working together with the Commission should leverage its

⁴ Human Rights Committee, General Comment No 34, CCPR/C/GC/34, 12 September 2011, para 25.

⁵ ‘Russian state media flouts European sanctions’, Politico, July 20, 2022.

⁶ “Content Regulation and Human Rights: Analysis and Recommendations,” The Global Network Initiative, 2020, <https://globalnetworkinitiative.org/wp-content/uploads/2020/10/GNI-Content-Regulation-HR-Policy-Brief.pdf>, 15.

policy that “all restrictive measures [such as sanctions] in force are kept under constant review to ensure that they continue to contribute towards achieving their stated objectives”⁷ to conduct a comprehensive assessment of the current broadcasting sanctions’ impacts on freedom of expression and how these might be mitigated.

As part of this process, the Council should hold consultations with the companies charged with blocking the content to gain a better understanding of the challenges they face. Civil society organizations should also be provided with opportunities to share their concerns regarding the human rights implications of the sanctions. We also encourage relevant EU bodies to consider how they might provide further clarity and mechanisms for stakeholder engagement around sanctions policies more broadly, including how they may impact freedom of expression. The forthcoming “European Media Freedom Act” could serve as one vehicle for addressing such considerations.

Necessity/Proportionality

With regard to the third part of ICCPR Article 19(3)’s three-part test, restrictions on freedom of expression must “be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected.”⁸ The purpose of the EU’s sanctions is apparently to restrict the spread to European audiences of Russian state-sponsored propaganda about the war in Ukraine. However, the EU sanctions on Russian broadcasters ban the transmission of *all* content from the designated outlets in *all* forms - including cable, satellite, Internet Protocol TV, platforms, websites and apps - to European audiences.⁹ As such, the ban restricts the transmission of a significant amount of content that is unrelated to the war in Ukraine. We encourage relevant authorities to consider whether less intrusive means may be available to

⁷ <https://www.consilium.europa.eu/en/policies/sanctions/adoption-review-procedure/>

⁸ General Comment 34, FN 5 *supra*, para 34.

⁹ EU Sanctions against Russia Explained,” Council of the European Union, June 28, 2022, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>.

address content that may be legitimately restricted, while minimizing the amount of unrelated expression that is otherwise affected.

This prong of the three-part test also requires that restrictions on freedom of expression should demonstrate a clear and direct connection between the expression and the threat being addressed, as well as the necessity of the particular approach to achieve the intended outcome.¹⁰ According to the EU Council, the sanctions on Russian broadcasters were adopted in response to their role in the “Russian Federation’s international campaign of disinformation, information manipulation and distortion of facts,” which is being undertaken to destabilize its neighboring countries and EU member states.¹¹ However, a recent analysis of the broadcasting ban highlights the limited amount of data available about the actual reach of RT and Sputnik, as well as the lack of consistency in terms of their actual threat across different Member States.¹²

In addition, to the extent this threat does exist, it is not clear that the sanctions are effective in countering this threat. Furthermore, as the authors of a recent analysis note, the broadcasting ban may actually undermine the ability of certain actors to respond to this threat by “forc[ing] RT and Sputnik content into the shadow, preventing EU citizens and the media to recognize and formulate a resilient response to wrongful propaganda, and affecting their right to receive information.”¹³ Research released just last week highlights how content from RT remains accessible within Europe in somewhat diffuse and obfuscated forms.¹⁴

The lack of a clear understanding of the precise threat that the restricted content poses, together with these questions about the sanctions’ efficacy, raise concerns about whether this extremely

¹⁰ “Content Regulation and Human Rights,” The Global Network Initiative, 17.

¹¹ “Council of the European Union,” Council of the European Union, March 2, 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/03/02/eu-imposes-sanctions-on-state-owned-outlets-rt-russia-today-and-sputnik-s-broadcasting-in-the-eu/>.

¹² Natalie Helberger and Wolfgang Schulz, “Understandable, but Still Wrong: How Freedom of Communication Suffers in the Zeal for Sanctions,” Media@LSE, June 10, 2022, <https://blogs.lse.ac.uk/medialse/2022/06/10/understandable-but-still-wrong-how-freedom-of-communication-suffers-in-the-zeal-for-sanctions/>.

¹³ Ibid.

¹⁴ Kata Balint, “RT Articles Are Finding Their Way to European Audiences – but How?,” Institute for Strategic Dialogue, July 20, 2022, https://www.isdglobal.org/digital_dispatches/rt-articles-are-finding-their-way-to-european-audiences-but-how/.

broad approach to content restriction is “necessary” for achieving its intended objective of countering the potential destabilization posed by Russian propaganda. Going forward, GNI encourages EU authorities to work with credible, independent researchers to better understand the precise threats that Russian propaganda poses and with a wide range of affected stakeholders to come up with narrowly-tailored and effective strategies to mitigate those threats.

Finally, GNI believes that restrictions imposed in the context of a conflict should either be time limited, include periodic revisions to establish if underlying conditions still justify restriction, or be clear about when, how and by whom such determinations about whether to end or continue restrictions will be made. These parameters are important given that restrictions that continue for too long are in danger of being overly intrusive.

Conclusion

GNI appreciates and applauds the EU’s leadership on digital rights, as well as the actions it has taken to support Ukraine and push back on unwarranted Russian aggression. The threats of disinformation and propaganda in this context are real and require attention. Going forward, GNI and its members would welcome opportunities to engage with relevant EU institutions to help develop appropriate responses that align with our shared commitment to freedom of expression.