

From: <[@ec.europa.eu](mailto:@ec.europa.eu)>  
Date: Fri, Mar 4, 2022, 6:57 PM  
Subject: Ukraine

Dear Signatories,

I am sending you the below email on behalf of [redacted], in order to provide clarifications related to the sanctions, following up on questions received.

Kind regards,  
[redacted]

**Disclaimer: please note that this is an informal position, which does not bind the Commission. Please also note that it is for national judges and ultimately for the European Court of Justice to rule on the interpretation of Union law.**

### **Internet search services**

In the Regulation the legislator intends to set out a very broad and comprehensive prohibition. Internet search services are provided by “operators” for the purposes of the Regulation. The Regulation prohibits both the broadcasting (which is a very broad concept in this Regulation) and the fact that operators “enable, facilitate or otherwise contribute to broadcast”. The Regulation refers in that regard to “including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications.” Furthermore, the anti-circumvention clause laid down in the Regulation is worded in very broad terms. A broad construction of the prohibition laid down in the Regulation is also consistent with its objective, which is in particular to tackle the fact that RT and Sputnik have to date gravely distorted and manipulated facts and have repeatedly and consistently targeted European political parties, especially during election periods, as well as civil society, asylum seekers, Russian ethnic minorities, gender minorities, and the functioning of democratic institutions in the Union and its Member States (recital 6); the Russian Federation has engaged in continuous and concerted propaganda actions targeted at civil society in the Union and neighbouring countries, gravely distorting and manipulating facts (recital 7).

Search engines such as Google are designed to index results containing any possible content; they index websites throughout the world; the information is indexed by their ‘web crawlers’ or robots, that is to say, computer programmes used to locate and sweep up the content of web pages methodically and automatically (see by analogy judgment of the ECJ in Google Spain, C-131/12, para. 43). The activity of search engines plays a decisive role in the overall dissemination of content in that it renders the latter accessible to any internet user making a search on the basis of the content indication or related terms, including to internet users who otherwise would not have found the web page on which that content is published (see by analogy

judgment of the ECJ in *Google Spain*, C-131/12, para. 36). Consequently, if search engines such as Google did not delist RT and Sputnik, they would facilitate the public's access to the content of RT and Sputnik, or contribute to such access.

It follows from the foregoing that by virtue of the Regulation, providers of Internet search services must make sure that i) any link to the Internet sites of RT and Sputnik and ii) any content of RT and Sputnik, including short textual descriptions, visual elements and links to the corresponding websites do not appear in the search results delivered to users located in the EU.

## **Social media**

In the Regulation the legislator intends to set out a very broad and comprehensive prohibition. Social media are operators and they offer a service to their users. The Regulation prohibits both the broadcasting (which is a very broad concept in this Regulation) and the fact that operators “enable, facilitate or otherwise contribute to broadcast”. The Regulation refers to “including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications.” Furthermore, the circumvention clause is worded in very broad terms. A broad construction of those terms is also consistent with the objective of the Regulation, which aims to tackle the fact that RT and Sputnik have to date gravely distorted and manipulated facts and have repeatedly and consistently targeted European political parties, especially during election periods, as well as civil society, asylum seekers, Russian ethnic minorities, gender minorities, and the functioning of democratic institutions in the Union and its Member States (recital 6); the Russian Federation has engaged in continuous and concerted propaganda actions targeted at civil society in the Union and neighbouring countries, gravely distorting and manipulating facts (recital 7).

It follows from the foregoing that social media must prevent users from broadcasting (*lato sensu*) any content of RT and Sputnik. That applies both to accounts which appear as belonging to individuals who are likely to be used by RT/Sputnik and to any other individuals. Moreover, social media accounts that either formally or *de facto* belong to RT and Sputnik or their affiliates must be suspended because it is prohibited under paragraph 1 and furthermore falls into “distribution arrangement”.

As regards the posts made by individuals that reproduce the content of RT and Sputnik, those posts shall not be published and, if published, must be deleted. There is of course a dividing line between, on the one hand, content by RT and Sputnik reproduced (broadcast) by an individual and, on the other hand, content by the author of the post; that line needs to be drawn also because the Regulation needs to be construed in line with the principle of proportionality and the fundamental right to freedom of speech. Admittedly, that line might be difficult to draw in certain cases in practice. It is true that social media are put under strain and that is in tension with the prohibition of general monitoring obligation laid down in Art. 15 E-commerce Directive. However, the decision to fully depart in the present Regulation from the E-commerce Directive has been a conscious one and justified on the ground of the situation and its temporary character.

### **Use of the content in media reporting on the sanction**

Pursuant to the freedom of speech, media have the right to report objectively on current events and to form their opinions thereon. The freedom of speech also entails that users have the right to receive objective information on current events. At the same time, the right to free speech can be restricted for legitimate public interests in a proportionate manner.

Where a media outlet other than Russia Today and Sputnik reports about the current Regulation and its consequences, it may inter alia provide the content and in that regard it may refer to pieces of news by RT and Sputnik, in order to illustrate the type of information given by the two Russian media outlets concerned with a view to informing their readers/viewers objectively and completely. The right of free speech of other media outlets can however not be used to circumvent the Regulation: under Article 12, “It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in this Regulation.” Therefore, if another media outlet purports to inform its readers/viewers, but in reality its conduct aims at broadcasting Russia Today or Sputnik content to the public or has that effect, it will be in breach of the prohibition laid down in the Regulation.