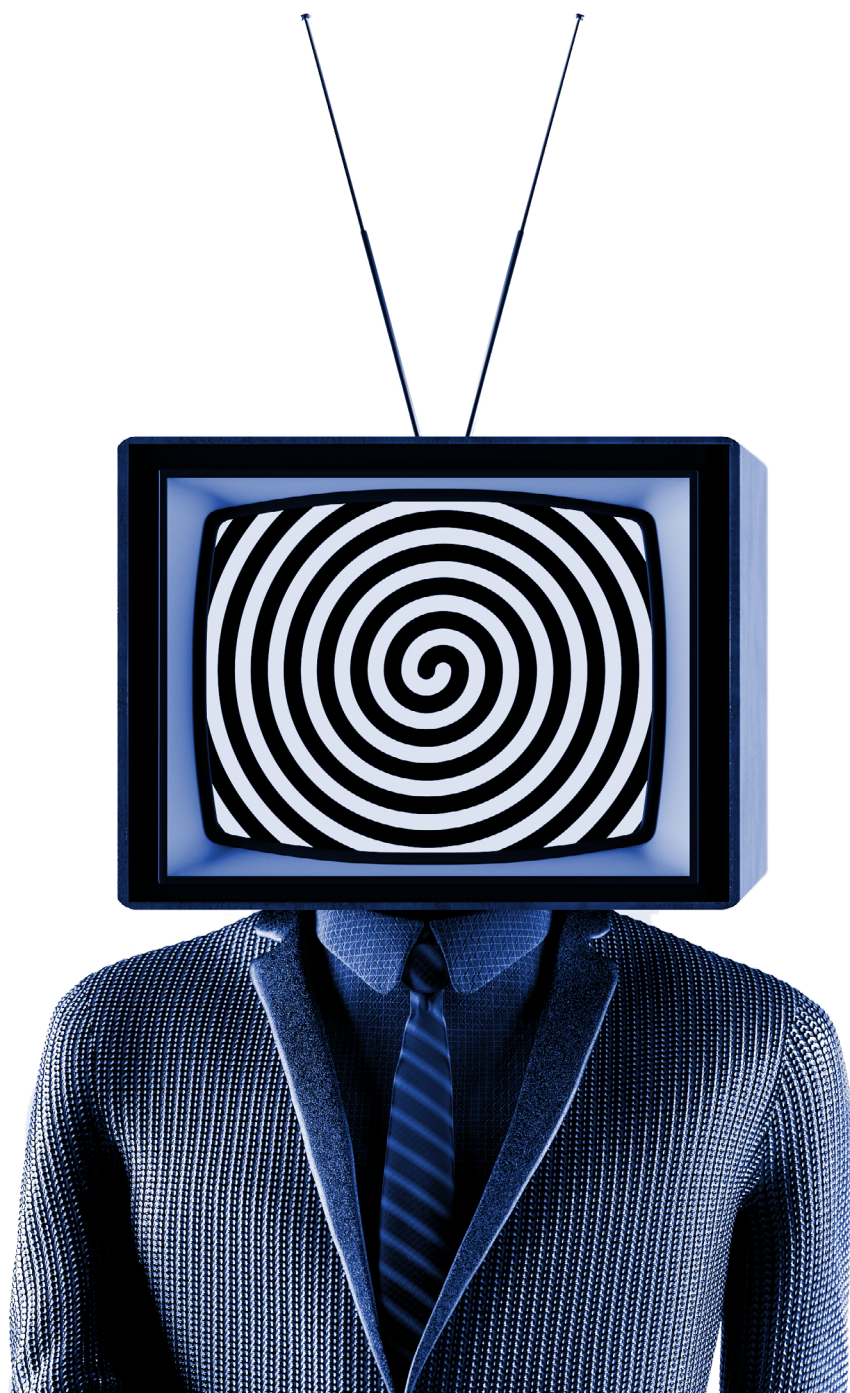


# **Censorship and Foreign Propaganda in the European Union: The Implications of the EU's Council Regulation 2022/350 for Freedom to Access Information**

Seamus Allen



# 1. Introduction

Censorship powers can be introduced by well-intentioned actors for justifiable motives and are in some cases arguably justified during crises. However, without robust legal and institutional constraints, even potentially justifiable censorship powers can be subject to later misuse, and can be used to suppress media freedom and dissent. This paper seeks to analyse the censorship policy and powers which underpin the European Union's (EU) Council Regulation 2022/350<sup>1</sup> which was adopted on Tuesday, 1 March 2022 to counter Russian propaganda, following Russia's invasion of Ukraine. This paper particularly seeks to assess the implications of this Regulation for the rights of European citizens to access information. Access to information is critical for the functioning of democracies, with the right to "*receive and impart information and ideas...regardless of frontiers*" explicitly listed as a fundamental human right within both the United Nations Universal Declaration of Human Rights (UNDHR) and the European Charter of Fundamental Rights.<sup>2</sup> This right allows citizens to make informed choices and to hold their governments to account.

Council Regulation (EU) 2022/350 gives the Council of the European Union (hereafter, the Council) the power to ban the "*transmission or distribution by any means*", with the "*broadest possible meaning*", of "*any content*", including through digital mediums, with a particular focus on the internet, social media, and smartphone apps.<sup>3</sup> The Regulation was initially applied to the Russian state-controlled RT network (formerly Russia Today) and the Russian state-owned Sputnik news agency. The Regulation was gradually applied to eleven additional Russian media organisations by June 2023.<sup>4</sup>

The European Commission has justified the Regulation as being necessary to counter Russian propaganda and has claimed that the Regulation is "*exceptional, targeted and temporary*."<sup>5</sup> A variety of media organisations, civil liberties groups, and NGOs, however, have criticised the Regulation or have expressed concerns regarding it.<sup>6</sup> The Freedom of Information Coalition, a coalition of media organisations, internet freedom organisations, and internet providers, brought a legal challenge against the Regulation to the Court of

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1. COUNCIL REGULATION (EU) 2022/350 of 1 March 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:065:FULL&from=EN>

2. Charter of Fundamental Rights of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>; United Nations Universal Declaration of Human Rights, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

3. COUNCIL REGULATION (EU) 2022/350 of 1 March 2022: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:065:FULL&from=EN>; Supporting Ukraine: Questions and Answers | Shaping Europe's digital future (europa.eu), <https://digital-strategy.ec.europa.eu/en/faqs/supporting-ukraine-questions-and-answers>

4. EU sanctions against Russia explained - Consilium (europa.eu), <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/#media>

5. Supporting Ukraine: Questions and Answers | Shaping Europe's digital future (europa.eu), <https://digital-strategy.ec.europa.eu/en/faqs/supporting-ukraine-questions-and-answers>

6. Fighting disinformation with censorship is a mistake - European Federation of Journalists (europeanjournalists.org), <https://europeanjournalists.org/blog/2022/03/01/fighting-disinformation-with-censorship-is-a-mistake/>;

IPI: Statement on banning of RT and Sputnik - International Press Institute, <https://ipi.media/ipi-statement-on-banning-of-rtand-sputnik/>; EDRI statement: the fundamental rights consequences of the EU media ban - European Digital Rights (EDRI), <https://edri.org/our-work/edri-statement-the-fundamental-rights-consequences-of-the-eu-media-ban/>; 10 Recommendations by the Taskforce on Disinformation and the War in Ukraine - EDMO, <https://edmo.eu/2022/06/29/10-recommendations-by-the-taskforce-on-disinformation-and-the-war-in-ukraine/>; "The European Union's RT and Sputnik Ban: Necessary and Proportionate?" - DSA Observatory (dsa-observatory.eu), <https://dsa-observatory.eu/2022/04/22/the-european-unions-rt-and-sputnik-ban-necessary-and-proportionate/>

Justice of the European Union (CJEU), which is ongoing at the time of writing.<sup>7</sup> There has been particular debate about the Regulation's compatibility with human rights law and with EU policies such as the e-Commerce Directive and Open Internet Policy, as well as on the EU's legal competence to enact the Regulation.<sup>8</sup>

This paper seeks to examine the policy and censorship powers underpinning Council Regulation 2022/350 and the policy implications of the Regulation, rather than the Regulation's legality. While Regulation 2022/350 itself is specifically related to Russia, the previously unrevealed censorship powers underpinning the Regulation can in future be adopted against other foreign media outlets. This paper seeks to assess the degree to which the powers underpinning and contained within Regulation 2022/350 empower European governments to restrict the rights of European citizens to access information.

Six particular features of the Regulation will be analysed, namely: i. the criteria which can be invoked to ban a media organisation's content; ii. the institutional decision-making process behind such bans; iii. the scope of content affected; iv. the implications for rights to access information; v. the duration of any ban; vi. and the implications for second-hand media reporting. This paper will note how policies similar to Council Regulation 2022/350 have been used in several countries to suppress media freedom and dissent, which indicates how such policies can be used in the absence of sufficient safeguards. This paper will also briefly indicate some alternative options that could have been adopted by the Council to counter Russian propaganda. This paper ultimately argues that Council Regulation (EU) 2022/350 is underpinned by an unprecedented power of censorship which infringes the right of European citizens to access information, and which is potentially detrimental to democratic safeguards.

## 2. The Criteria for Censorship

First it should be noted that Council Regulation (EU) 2022/350 empowers decision-makers to ban the content of media organisations which they deem to engage in the "*manipulation and distortion of facts*"<sup>9</sup> Decision-makers are not confined to censoring organisations which produce false content or disinformation, which is defined by the European Democracy Action Plan as: "*false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm*".<sup>10</sup> Furthermore, since Council Regulation (EU) 2022/350 provides no metrics, methodology, or definitions to assess what constitutes the "*manipulation and distortion*" of facts, it is thus up to the discretion of the Council to decide what constitutes such a "*manipulation*" or "*distortion*."

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7. Freedom of Information Coalition (FOIC) takes case to European court - BIT, <https://www.bit.nl/FOIC-goes-to-court>; Second complaint to the European Court of Justice concerning the blockade of Russian news channels / Villamedia, <https://www.villamedia.nl/artikel/coalitie-voor-persvrijheid-en-internetvrijheid-dient-tweede-klacht-in-bij-europese-hof-van-justitie-vanwege-blokkade-russische-kanalen>

8. The European Union's RT and Sputnik Ban: Necessary and Proportionate? - DSA Observatory (dsa-observatory.eu), <https://dsa-observatory.eu/2022/04/22/the-european-unions-rt-and-sputnik-ban-necessary-and-proportionate/>; The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression - EJIL: Talk! (ejiltalk.org), <https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/>; Banning RT and Sputnik Across Europe: What Does it Hold for the Future of Platform Regulation? - ISD (isdglobal.org), [https://www.isdglobal.org/digital\\_dispatches/banning-rt-and-sputnik-across-europe-what-does-it-hold-for-the-future-of-platform-regulation/](https://www.isdglobal.org/digital_dispatches/banning-rt-and-sputnik-across-europe-what-does-it-hold-for-the-future-of-platform-regulation/); Dutch coalition to EU court to un-block Russian sites | NL Times, <https://nltimes.nl/2022/05/24/dutch-coalition-eu-court-un-block-russian-sites>

9. COUNCIL REGULATION (EU) 2022/350 of 1 March 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:065:FULL&from=EN>

10. European Democracy Action Plan, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>

### 3. The Institutional Decision-Making Process

The second feature of the Regulation examined here is the institutional decision-making process underpinning both: the adoption of the Regulation; and, the process by which the Regulation is applied to ban the content of media outlets. Council Regulation (EU) 2022/350 was adopted unilaterally by the Council within the framework of the EU's Common Foreign and Security Policy (CFSP).<sup>11</sup> The fact that the Regulation was adopted in this way is significant. Unlike the processes underpinning most EU law, regulations can be adopted under the CFSP without the approval of the European Parliament. As a regulation enacted under the auspices of CFSP, this also leaves limited scope for the Court of Justice of the European Union (CJEU) to mount a challenge against its application.<sup>12</sup> The power to decide which media outlets' content should be banned because the media outlet engages in the "*manipulation and distortion of facts*" is a power that Council Regulation (EU) 2022/350 gives to the Council – the same body that adopted the Regulation in the first place. Therefore, the Council can act unilaterally in applying this power and does not require the approval of parliaments, judicial authorities, or independent regulators to use the powers provided by the Regulation. The Council is not required to provide evidence or documentation to prove that the banned media organisations engage in the "*manipulation*" and "*distortion*" of facts. The Council also decides whether to apply the Regulation at its own discretion – the Council could choose to tolerate organisations that do systematically distort and manipulate facts, while banning media entities that engage in this practice to a lesser degree. This limits the ability of other institutions to scrutinise how the Council makes decisions and to hold it accountable for how it applies the Regulation. It should also be noted that while the decision to adopt such a Regulation requires unanimity in the Council, the subsequent application of the Regulation to ban media outlets requires only qualified majority votes (QMV).<sup>13</sup> This means that the Council can ban access to foreign media outlets even in EU countries whose governments disagree with the banning of those outlets.<sup>14</sup>

Politicians and public figures can have vested interests in public discourse which is why there are typically restrictions on the ability of governments to censor media in democracies. In response to Council Regulation (EU) 2022/350, the General Secretary of the European Federation of Journalists (EFJ), Ricardo Gutiérrez, stated that:

*"In our liberal democracies, it is independent regulators, never the government, that are allowed to manage the allocation of licences. The EU's decision is a complete break with these democratic guarantees. For the first time in modern history, Western European governments are banning media."*<sup>15</sup>

Council Regulation (EU) 2022/350 thus gives broad and discretionary powers of censorship to governments in a decision-making process with limited democratic oversight, transparency, checks, or balances.

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11. EU officially boots Russia's RT, Sputnik outlets – POLITICO, <https://www.politico.eu/article/russia-rt-sputnik-illegal-europe/>

12. Treaty on European Union (TEU) - The Faculty of Law (uio.no), [https://www.jus.uio.no/english/services/library/treaties/14/14-03/teu\\_cons.html#treaty-header2-2](https://www.jus.uio.no/english/services/library/treaties/14/14-03/teu_cons.html#treaty-header2-2)

13. Email correspondence between author and European Commission spokesperson Johannes Bahrke

14. Qualified majority voting explained at: Qualified majority - Consilium (europa.eu), <https://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>

15. Fighting disinformation with censorship is a mistake – European Federation of Journalists (europeanjournalists.org), <https://europeanjournalists.org/blog/2022/03/01/fighting-disinformation-with-censorship-is-a-mistake/>



## 4. The Scope of Content Affected

A third feature of the Regulation is that it bans access to all content produced by the media organisations to which the Regulation has been applied, while it is only necessary for the Council to claim that some of the content produced by the organisation constitutes the “*manipulation and distortion of facts*”. The Regulation was also designed to counter propaganda generally and is not specific to war-related content. Thus, as Council Regulation (EU) 2022/350 applies to media organisations as opposed to individual pieces of content, the operation of the Regulation enables the censorship of content that is potentially truthful, accurate, and fair. Moreover, Council Regulation (EU) 2022/350 does not set out thresholds regarding how much or how frequently distortion and manipulation must be engaged in by an organisation before that organisation’s content can be banned under its auspices. Notably, even well respected media outlets – such as the *RTE*, the *New York Times*, or the *Guardian* – can sometimes produce content that is distorted or false.<sup>16</sup> Indeed, Reporters Without Borders and the EFJ have both condemned cases of honest mistakes by media being used by governments as justifications to suppress media freedom.<sup>17</sup> The powers underpinning Council Regulation (EU) 2022/350 thus potentially enables decision-makers to selectively ban certain media outlets to which they are hostile while tolerating others to which they are sympathetic.

## 5. Targeting Access to Information Rather Than Content Production

Notably, Regulation 2022/350 is not simply aimed at preventing or punishing the dissemination of content by the prohibited entities, but it also seeks to prevent European citizens from being able to access this content.<sup>18</sup> Indeed, the Regulation does not actually ban these entities from operating as businesses or directly prevent them from producing content. The Regulation explicitly makes clear that: “*these measures do not prevent those media outlets and their staff from carrying out other activities in the Union than broadcasting, such as research and interviews*” and notes they will enjoy “*the freedom to conduct a business*” in Europe.<sup>19</sup> Indeed, RT France, one of the prohibited entities, continued producing content within Europe, which remained legal (as opposed to transmitting or distributing the content within Europe, which the Regulation makes illegal).<sup>20</sup> Thus, it is notable that the Council could have responded to propaganda with measures that placed greater emphasis on punishing organisations engaged in wrongdoing (by targeting their business operations to a greater degree) rather than primarily relying on measures which infringe the rights of European citizens to access information.

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16. Fr Kevin Reynolds, *RTE defamation case settled* (rte.ie), <https://www.rte.ie/news/2011/1117/308846-reynoldsk/>; CORRECTING THE RECORD; Times Reporter Who Resigned Leaves Long Trail of Deception - The New York Times (nytimes.com), <https://www.nytimes.com/2003/05/11/us/correcting-the-record-times-reporter-who-resigned-leaves-long-trail-of-deception.html>; What we got wrong: the Guardian’s worst errors of judgment over 200 years | The Guardian | The Guardian, <https://www.theguardian.com/media/2021/may/07/guardian-200-what-we-got-wrong-the-guardians-worst-errors-of-judgment-over-200-years>

17. Predators of press freedom use fake news as a censorship tool | RSF, <https://rsf.org/en/predators-press-freedom-use-fake-news-censorship-tool>; India: Thousands protest against treatment of The Wire editor - IFJ, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/india-thousands-protest-against-treatment-of-the-wire-editor>

18. Dutch journalists, rights group file lawsuit challenging EU ban on RT, Sputnik | Reuters, <https://www.reuters.com/business/media-telecom/dutch-journalists-rights-group-file-lawsuit-challenging-eu-ban-rt-sputnik-2022-05-25/>; Freedom of Information Coalition (FOIC) takes case to European court - BIT, <https://www.bit.nl/FOIC-goes-to-court>

19. COUNCIL REGULATION (EU) 2022/350 of 1 March 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:065:FULL&from=EN>

20. How Putin’s French news outlet dodged EU sanctions – POLITICO, <https://www.politico.eu/article/vladimir-putin-emmanuel-macron-french-news-outlet-dodged-eu-sanctions/>

## 6. The Duration of the Ban

Council Regulation (EU) 2022/350 has sometimes been presented as being strictly limited in duration, and as a measure that will only continue to last alongside the war in Ukraine.<sup>21</sup> However, the Regulation states that:

*“These measures should be maintained until the aggression against Ukraine is put to an end, and until the Russian Federation, and its associated media outlets, cease to conduct propaganda actions against the Union and its Member States.”*<sup>22</sup>

It is worth noting that the Regulation explicitly refers to diverse categories of propaganda and is not specifically aimed at war-related propaganda.<sup>23</sup> Thus, the text of the Regulation suggests that the ban will remain in place until such a time as the Council explicitly chooses to remove it.<sup>24</sup> European Commission spokesperson, Johannes Bahrke, states that in relation to Council Regulation (EU) 2022/350: *“The Council will determine when to stop these measures.”*<sup>25</sup>

## 7. Second-Hand Reporting

A sixth feature of the Regulation is that mainstream European media are restricted from reporting on the content of the prohibited entities and are therefore themselves, it is argued here, subjected to a certain level of indirect censorship. The European Commission’s publicly accessible Q&A states that *“Freedom of speech cannot be relied on by other media outlets to circumvent the Regulation. The non-circumvention equally applies to journalists.”*<sup>26</sup> The Commission’s Q&A explains that there is a partial exception specifically for *“reports about the current Regulation and its [sic] consequences”* in which media outlets may cite otherwise prohibited content, but only *“in order to illustrate the type of information given”* and only if done *“objectively and completely”*. More generally, reporting that has the effect of disseminating content of the prohibited entities *“will be in breach of the prohibition laid down in the Regulation.”*<sup>27</sup> Both the European Digital Media Observatory (EDMO) and the Dutch Association of Journalists (Nederlandse Vereniging van Journalisten (NVJ)) have noted that the Regulation effectively blocks European media from being able to report on Russian media content, including for the purpose of countering

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21. Supporting Ukraine: Questions and Answers | Shaping Europe’s digital future (europa.eu), <https://digital-strategy.ec.europa.eu/en/faqs/supporting-ukraine-questions-and-answers>; EU rolls out new sanctions banning RT and Sputnik – EURACTIV.com, <https://www.euractiv.com/section/digital/news/eu-rolls-out-new-sanctions-banning-rt-and-sputnik/>

22. COUNCIL REGULATION (EU) 2022/350 of 1 March 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:065:FULL&from=EN>

23. COUNCIL REGULATION (EU) 2022/350 of 1 March 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:065:FULL&from=EN>

24. On the regulation being effectively indefinite see: Understandable, but still wrong: How freedom of communication suffers in the zeal for sanctions | Media@LSE; <https://blogs.lse.ac.uk/mediase/2022/06/10/understandable-but-still-wrong-how-freedom-of-communication-suffers-in-the-zeal-for-sanctions/>; and “The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression – EJIL: Talk!” (ejiltalk.org) <https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/>; and ‘Moscow Calling’ | Dutch Association of Journalists, (nvj.nl), <https://www.nvj.nl/nieuws/moscow-calling>

25. Email correspondence with author

26. Supporting Ukraine: Questions and Answers | Shaping Europe’s digital future (europa.eu), <https://digital-strategy.ec.europa.eu/en/faqs/supporting-ukraine-questions-and-answers>

27. Supporting Ukraine: Questions and Answers | Shaping Europe’s digital future (europa.eu), <https://digital-strategy.ec.europa.eu/en/faqs/supporting-ukraine-questions-and-answers>

disinformation.<sup>28</sup> This suggests that even if mainstream European media were to assess and fact-check a story published by a prohibited entity, they may be barred from reporting it.

This also means that other media outlets and stakeholders are constrained in their ability to challenge or criticise wrongful media bans that might be imposed by the Council. This is because other media outlets and stakeholders will be restricted in their ability to cite evidence that could disprove wrongful accusations against sanctioned media. This makes it difficult for decision-makers to be held accountable if the powers of the Regulation were ever to be incorrectly or improperly used.

## 8. Misuses of Censorship Powers

Policies that are similar to Council Regulation (EU) 2022/350 or that are based on similar justifications, have been used in many countries to clamp down on media freedom and dissent. This can indicate how censorship policies can be misused in the absence of sufficient safeguards. In recent years governments in some European countries have made attempts to undermine media freedom, as has been documented by media freedom organisations, civil liberties groups, and human rights organisations.<sup>29</sup> The situation is especially severe in countries such as Greece, Hungary, Poland, and Slovenia.<sup>30</sup> It should thus be noted that the Council itself consists of representatives of governments who have been accused of undermining media freedom. The governments of Hungary,<sup>31</sup> Poland,<sup>32</sup> and Slovenia,<sup>33</sup> have justified state censorship and media crackdowns as being responses to “*distorted facts*”<sup>34</sup> “*distorted narrative*,”<sup>35</sup> and “*manipulative reporting*”<sup>36</sup> in the media – thus using similar justifications that underpin Council Regulation (EU) 2022/350.<sup>37</sup> Critics have argued that Hungary’s law against “*distorted information*”, by being more subjective than Hungary’s ban on the propagation of “*false information*”, provides the Hungarian government with

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28. 10 Recommendations by the Taskforce on Disinformation and the War in Ukraine – EDMO, <https://edmo.eu/2022/06/29/10-recommendations-by-the-taskforce-on-disinformation-and-the-war-in-ukraine/>; ‘Moscow Calling’ | Dutch Association of Journalists (nvj.nl), <https://www.nvj.nl/nieuws/moscow-calling>

29. Press freedom “problematic” in almost 40% of Europe & Central Asia – EURACTIV.com, <https://www.euractiv.com/section/media/news/press-freedom-problematic-in-almost-40-of-europe-central-asia/>; Media Freedom: A Downward Spiral | Freedom House, <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral>; Rights Groups Urge EU Policy Makers To Strengthen Media Freedom | liberties.eu, <https://www.liberties.eu/en/stories/emfa-open-letter-meeps/44650>

30. Poland’s Government Tightens Its Control Over Media : NPR, <https://www.npr.org/2021/01/04/951063118/polands-government-tightens-its-control-over-media>; How Greece became Europe’s worst place for press freedom – POLITICO, <https://www.politico.eu/article/greece-became-europe-worst-place-press-freedom/>; Hungary: Government’s stranglehold on media poses serious risks to human rights – UN expert | OHCHR, <https://www.ohchr.org/en/press-releases/2021/11/hungary-governments-stranglehold-media-poses-serious-risks-human-rights-un>; Report shows media in Slovenia systematically undermined by government – EURACTIV.com, [https://www.euractiv.com/section/politics/short\\_news/report-shows-media-in-slovenia-systematically-undermined-by-government/](https://www.euractiv.com/section/politics/short_news/report-shows-media-in-slovenia-systematically-undermined-by-government/)

31. Orbán critics fall foul of Hungary’s controversial corona law – POLITICO, <https://www.politico.eu/article/viktor-orban-critics-fall-foul-of-hungary-controversial-coronavirus-covid19-law/>

32. A fragmented response to media freedom at risk in the Union – Verfassungsblog, <https://verfassungsblog.de/a-fragmented-response-to-media-freedom-at-risk-in-the-union/>

33. War with the media | GOV.SI, <https://www.gov.si/en/news/2020-05-11-war-with-the-media/>

34. Orbán critics fall foul of Hungary’s controversial corona law – POLITICO, <https://www.politico.eu/article/viktor-orban-critics-fall-foul-of-hungary-controversial-coronavirus-covid19-law/>

35. A fragmented response to media freedom at risk in the Union – Verfassungsblog, <https://verfassungsblog.de/a-fragmented-response-to-media-freedom-at-risk-in-the-union/>

36. War with the media | GOV.SI, <https://www.gov.si/en/news/2020-05-11-war-with-the-media/>

37. A fragmented response to media freedom at risk in the Union – Verfassungsblog, <https://verfassungsblog.de/a-fragmented-response-to-media-freedom-at-risk-in-the-union/>; Orbán critics fall foul of Hungary’s controversial corona law – POLITICO, <https://www.politico.eu/article/viktor-orban-critics-fall-foul-of-hungary-controversial-coronavirus-covid19-law/>; War with the media | GOV.SI, <https://www.gov.si/en/news/2020-05-11-war-with-the-media/>

greater scope to engage in censorship, including targeting its critics for their opinions even when they have not said anything false.<sup>38</sup> The Polish government has claimed some of its media policies aim to stop the spread of pro-Russian narratives, but it has used these policies to target foreign media that are critical of the Polish government, including German and US-owned media outlets.<sup>39</sup> Invoking the need to counter fake news, disinformation, foreign propaganda and distorted information are common rationales used globally to suppress media freedom and persecute dissent, as seen in countries such as Qatar,<sup>40</sup> Bahrain,<sup>41</sup> Russia,<sup>42</sup> Turkey,<sup>43</sup> India,<sup>44</sup> and the Philippines.<sup>45</sup> The examples above indicate that policies against disinformation, foreign propaganda, or the distortion and manipulation of facts can lead to censorship of dissent, including in countries that have previously been considered democratic. This highlights the importance of ensuring that such policies are accompanied by sufficient safeguards to constraint the misuse of censorship policies.

## 9. Alternative Approaches to Foreign Propaganda

Arguably, the Council could have responded to Russian propaganda without creating powers that are as broad and far-reaching as those set out in Council Regulation (EU) 2022/350. It is notable that both Norway and Switzerland, both of which adopted most of the EU's sanctions against Russia, explicitly decided not to adopt Council Regulation (EU) 2022/350 - deeming it a disproportionate threat to freedom of expression in response to the threat of Russian disinformation.<sup>46</sup> Irene Khan, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, criticised Council Regulation (EU) 2022/350 as constituting a “*very severe step*” that was “*not necessary*” and argued

38. Orbán critics fall foul of Hungary's controversial corona law - POLITICO, <https://www.politico.eu/article/viktor-orban-critics-fall-foul-of-hungary-controversial-coronavirus-covid19-law/>; Hungary's COVID-19 law creates 'uncertainty' for journalists - DW - 04/07/2020, <https://www.dw.com/en/hungary-law-to-fight-coronavirus-creates-uncertainty-for-journalists/a-53027631>; Two People in Hungary Detained for Their Political Views | Liberties.eu, <https://www.liberties.eu/en/stories/two-people-in-hungary-detained-for-their-political-views/18625>

39. Poland: Media regulator probe into TVN documentary sparks renewed licence concerns - International Press Institute (ipi.media), <https://ipi.media/poland-media-regulator-probe-into-tvn-documentary-sparks-renewed-licence-concerns/>; Polish government's media bill is latest move to silence its critics | Poland | The Guardian, <https://www.theguardian.com/world/2021/aug/11/polish-government-media-bill-latest-move-silence-critics>; Poland uses state-owned refiner to buy regional media firm | Reuters, <https://www.reuters.com/article/us-polskapress-m-a-pknorlen-idUKKBN28H277>; New media law puts Poland, US on collision course - EURACTIV.com, [https://www.euractiv.com/section/politics/short\\_news/new-media-law-puts-poland-us-on-collision-course/](https://www.euractiv.com/section/politics/short_news/new-media-law-puts-poland-us-on-collision-course/)

40. Qatar: 5-Year Prison Sentence Set for 'Fake News' | Human Rights Watch (hrw.org), <https://www.hrw.org/news/2020/01/22/qatar-5-year-prison-sentence-set-fake-news>

41. Bahrain: Freedom on the Net 2021 Country Report | Freedom House, <https://freedomhouse.org/country/bahrain/freedom-net/2021>

42. Russia further tightens already repressive “fake news” and “discreditation” laws - International Press Institute (ipi.media), <https://ipi.media/russia-further-tightens-already-repressive-fake-news-and-discreditation-laws/>

43. Turkey: new 'disinformation' law could jail journalists for three years | Turkey | The Guardian, <https://www.theguardian.com/world/2022/oct/13/turkey-new-disinformation-law-could-jail-journalists-for-3-years>

44. Tax raids at BBC offices in India enter second day | India | The Guardian, <https://www.theguardian.com/world/2023/feb/15/tax-raids-at-bbc-offices-in-india-enter-second-day>; Govt Calls BBC Film 'Propaganda Piece With Bias', Channel Says Govt Had Declined to Respond (thewire.in), <https://thewire.in/politics/a-propaganda-piece-with-bias-govts-reply-to-bbc-documentary-on-pm-modi-and-2002-riots>; Censor Board responsible for filmmakers distorting history: NCP's Awhad on 'Har Har Mahadev' stir - India Today, <https://www.indiatoday.in/india/story/jintendra-awhad-on-har-har-mahadev-marathi-movie-ncp-leader-censor-board-distorting-history-2294829-2022-11-09>

45. Filipino Journalist Maria Ressa Convicted of Libel - The New York Times (nytimes.com), <https://www.nytimes.com/2020/06/14/business/maria-ressa-verdict-philippines-rappler.html>

46. On Norway see: European Audiovisual Observatory: “SANCTIONS ON RT AND SPUTNIK NOT TO BE ADOPTED IN NORWAY”, <https://merlin.obs.coe.int/article/9488#:~:text=On%2026%20April%202022%2C%20Anette%20Trettebergstuen%2C%20Minister%20of,to%20basic%20societal%20functions%20in%20Norway%E2%80%9D%2C%20she%20said>; On Switzerland see: EXPLAINED: Why Switzerland has not banned Russia's propaganda network read://<https://www.thelocal.ch/?url=https%3A%2F%2Fwww.thelocal.ch%2F20220323%2Fexplained-why-switzerland-has-not-banned-russias-propaganda-networks> Switzerland and Norway refuse to ban RT and Sputnik (broadbandtvnews.com); <https://www.broadbandtvnews.com/2022/06/14/switzerland-and-norway-refuse-to-ban-rt-and-sputnik/>



that Europe's information environment, like Switzerland's, had the capability to "challenge and disprove false information."<sup>47</sup> The EU could have taken steps such as bolstering media pluralism and providing greater support to fact-checking organisations and initiatives to counter propaganda.<sup>48</sup>

Secondly, more legal constraints and democratic safeguards could have been included within the Regulation. For example, thresholds and a clear methodology to determine what constitutes the "distortion" and "manipulation" of facts could have been set out. A broader decision-making process could also have been established, including independent regulators and the European Parliament. The scope of content affected could also have been subjected to restrictions; instead of a regulation that bans all content produced by any designated organisation, regardless of topic and truthfulness, a censorship regulation might ban only content that actually contains the "distortion" and "manipulation" of facts. Alternatively, it might ban only content that relates to a specified topic - such as the war in Ukraine. Although the Council may have wished to apply the Regulation rapidly given the war context, provisions could have been included within the Regulation that would require the addition of safeguards within the regulation at a later date, with a role for other institutions to participate. Dutch Digital Minister Alexandra van Huffelen from the liberal progressive Democrats 66 party expressed concern about the Regulation and argued that it should be temporary and regularly reviewed.<sup>49</sup> There was thus a variety of ways that the Council could have responded to Russian propaganda without posing as many risks to the right to access information as posed by the adoption of Council Regulation (EU) 2022/350.

## 10. Conclusion

The implications of Council Regulation (EU) 2022/350 mean that, in the name of countering foreign propaganda, European governments have acquired drastic censorship powers which they can apply to control what information their citizens can and cannot access. While Council Regulation (EU) 2022/350 itself is specifically related to Russia, the underpinning powers of the Council to adopt such regulations can be used against other countries and foreign media. This paper argues that the Council now has the power to engage in censorship based on subjective criteria that are vague, subjective, and potentially arbitrary, via a decision-making process with minimal checks, balances, or transparency and in a manner that can potentially have an excessively broad scope of application. If a foreign media outlet publishes a story that the Council disapproves of, the Council has the power to ban all content published by that outlet and has powers to restrict EU media outlets from reporting the story. The Council does not need to provide evidence to support its claim that the organisation is 'manipulating' or 'distorting' facts or need to claim that a story it disapproves of does so. Nor does the Council need any other body or organisation to approve of any ban. Policies similar to Council Regulation (EU) 2022/350 are being used in other countries, both within and outside Europe, to enable governments to stifle media freedom and dissent,

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47. IIEA: Freedom of Expression and Armed Conflict - YouTube, [https://www.youtube.com/watch?v=g2U8M\\_uMpBg](https://www.youtube.com/watch?v=g2U8M_uMpBg)

48. European Digital Media Observatory (EDMO) | Shaping Europe's digital future (europa.eu), <https://digital-strategy.ec.europa.eu/en/policies/european-digital-media-observatory>; About - EUvsDisinfo, <https://euvsdisinfo.eu/about/>

49. Dutch minister wants limits on RT, Sputnik ban to prevent precedent - POLITICO, <https://www.politico.eu/article/dutch-minister-wants-limits-on-rt-sputnik-ban-to-prevent-precedent/>

which can contribute to democratic backsliding. Ultimately, the adoption of this policy within the EU provides governments with potentially far-reaching powers of censorship in a manner that infringes the rights of their citizens to access information and that is detrimental to democratic safeguards.

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