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Stemming the Narrative Flow: the Legal and Psychological Grounding for The European Union's Ban on Russian State-Sponsored Media

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Abstract

On 2 March 2022, in response to framed and anti-Western narratives surrounding the Russian invasion of Ukraine, the Council of the European Union legally banned two Russian state-sponsored media outlets, RT and Sputnik, within EU borders. The decision of the Council divided opinion. While the ban indeed limits the reach of these Russian 'organs of influence', it also infringes on fundamental human rights within the

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EU. It is therefore pertinent to scrutinise if the benefit of prohibiting the Kremlin's antagonistic narration is worth the sacrifice of impeding fundamental principles of democracy. How proportional and how necessary is the ban? The current article assesses these questions from a psychological and legal perspective. It argues that while the decision to ban RT and Sputnik is legally sound, the justification for the decision would benefit from a more elaborate explanation of balancing the different (colliding) fundamental rights, not least since the disruptive effect of the RT and Sputnik narration is unsettled. Moreover, instead of a blanket ban, a less stringent and more nuanced approach could be more appropriate, affording the ability to appropriately sanction RT and Sputnik while remaining proportional and mitigating a possible backfire effect.

Introduction

> Efforts to control the visual and narrative dimensions of war delimit public discourse by establishing and disposing the sensuous parameters of reality itself.[1]

On 24 February 2022 the Russian Federation invaded Ukraine, marking a major escalation in Russia's hostile activity that began in 2014. Next to the military operation, an information operation was built that sought to justify the incursion as a 'special military operation' that aimed to denazify the country and protect the eastern regions of Donetsk and Luhansk, which Russia had recognised as independent days prior. In response to these developments, the Council of the European Union announced that it would be legally banning two Russian state-sponsored media outlets: RT (formerly Russia Today) and Sputnik, within EU borders.[2] In a statement President of the European Union Ursula von

1 Judith P. Butler, *Frames of War: When Is Life Grievable?* (London: Verso Books, 2010), p. xi.

2 Effective as of 2 March 2022, the date of publication. See: Council of the European Union, 'Legislation concerning Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine—Council Regulation 2022/350 & Council Decision 2022/351', OJ L 65, 2 March 2022.

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der Leyen said that the ban was to prevent the outlets from 'spread[ing] their lies to justify Putin's war and to sow division in our Union'.[3]

This decision divided opinion. As a justification, the Council referred to the control the Kremlin has over Russian media outlets, and how 'disinformation, information manipulation and distortion of facts' are used as strategic tools to destabilise targeted European states. More specifically, RT and Sputnik were said to be explicitly used to justify Russia's war in Ukraine.

Yet the decision to ban the outlets was criticised as a violation of freedom of information. The International Press Institute released a statement saying such a ban should only be implemented at the state level, that such bans are ineffective in countering propaganda, and that such measures may stoke Russia to reciprocate by banning Western media in Russia.[4] Such sentiments were echoed by the European Federation of Journalists, which labelled the ban 'a mistake'.[5] The decision was later defended by the Council, which said 'they are not independent media, they are assets, they are weapons, in the Kremlin's manipulation ecosystem'.[6]

Clearly the ban broaches a tension whereby, on the one hand, there is a desire to stem the flow of antagonistic narration that is projected into Western societies by hostile political actors, such as Russia or China. Yet, on the other, maintaining the values that Western democracy is built upon—of freedom of information and expression—is paramount to preserving the legitimacy of European political institutions. Being seen to infringe on these values could not only create a hypocritical image in the eyes of European citizens but could also be exploited as it echoes a long-standing anti-EU narrative by Russia.

3 'Statement by President von der Leyen on Further Measures to Respond to the Russian Invasion of Ukraine', *European Commission,* 27 February 2022.

4 IPI, 'IPI: Statement on Banning of RT and Sputnik', *International Press Institute,* 4 March 2022.

5 EFJ, 'Fighting Disinformation with Censorship Is a Mistake', *European Federation of Journalists,* 1 March 2022.

6 European Union External Action, 'Disinformation: Speech by High Representative/Vice-President Josep Borrell at the EP Debate', 8 March 2022.

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In this article we question whether the ban on state-sponsored media is a proportionate and necessary measure, worth the sacrifice of impeding pivotal principles of democracy. In this way, we strive to go beyond the political rhetoric and navigate the grounds upon which the ban is made, something that has not yet been scrutinised. Psychologically, we ask if the hostile narration projected by RT and Sputnik causes the type of destabilising psychological effects that would warrant the ban as necessary. From a legal perspective, we scrutinise the justification for such far-reaching sanctions and assess whether the costs of the legal ban outweigh the impact of the Russian narration. We conduct our research based on a multidisciplinary approach, taking into consideration psychological and legal perspectives, and review pertinent literature from both disciplines to provide a consolidated answer to this question.

We begin by embedding the discourse in a political context, then turn to discuss the role of RT and Sputnik as assets of the Russian state. After this we parse findings from recent research examining both the audience(s) accessing and effects triggered by Russian antagonistic strategic narratives. We then move to the legal framework on which the blocking of media outlets is possible and assess which exceptional circumstances would justify a legal ban. Lastly, we discuss the consequences of the ban, connecting with broader debates on how open societies can deal with disinformation, and conclude by reflecting, according to our analysis, on the Council's choice to opt for 'blocking' Russian antagonistic narration.[7]

Political Warfare

The EU ban is best assessed within a wider discourse of Russia–Western relations. Both sides make use of narratives to portray the opponent in a framed and often negative manner. Whereas the West sees Russia as

7 We do not intend to justify the Russian war of aggression against Ukraine, nor to downplay the Russian 'war against reality' or the long-time development to suppress independent media and criticism. See also David Kaye, 'Online Propaganda, Censorship and Human Rights in Russia's War against Reality', *American Society of International Law* 116 (2022): 140–44; Mariëlle Wijermars, 'Russia's Law "On News Aggregators": Control the News Feed, Control the News?', *Journalism* 22 № 12 (2021): 2938–54.

DOI 10.30966/2018.RIGA.11.2

an irrational and immoral actor, generating an offensive threat, and causing chaos, Russia accuses the West of having double standards and as an immoral actor distorting the truth.[8]

The use of propaganda or disinformation is not new. The Cold War era saw many Russian and American (US) interferences in each other's sphere of influence, mainly within the remit of espionage or covert actions. The employment of 'all the means at a nation's command, short of war, to achieve its national objectives'[9] is a form of political warfare in which one state uses 'political means to compel an opponent to do one's will'.[10] Russian political warfare or 'active measures' seek to find strategic advantages by deception, forgeries,[11] provocation, and subversion,[12] but also by the spreading of disinformation.[13]

Foreign interferences and information operations appear to have gained increased momentum with the emergence of cyberspace, including the internet and social media. While narratives can be used strategically to sway targeted audiences, the assumed effectiveness of narratives depends on the possibility to coordinate, align, and synchronise state actors,[14] including (state-controlled) media.[15] Contrary to Russia, most liberal democracies have limited or no control over media outlets.[16] Cohen and Bar'el argue that there is a 'basic asymmetry in rules of engagement

8 Mario Baumann, '"Propaganda Fights" and "Disinformation Campaigns": The Discourse on Information Warfare in Russia-West Relations', *Contemporary Politics* 26 № 3 (2020): 293–97.

9 Linda Robinson, Todd C. Helmus, Raphael S Cohen, Alireza Nader, Andrew Radin, Madeline Magnuson, and Katya Migacheva, 'Modern Political Warfare: Current Practices and Possible Responses', *RAND Corporation*, 2018, citing George Kennan, pp. 1 and 321–22.

10 Paul A. Smith, *On Political War* (National Defense University, 1989), p. 3.

11 Martin Kragh and Sebastian Åsberg, 'Russia's Strategy for Influence through Public Diplomacy and Active Measures: The Swedish Case', *Journal of Strategic Studies* 40 № 6 (2017): 773–816 (790–97).

12 Andrew Radin, Alyssa Demus, and Krystyna Marcinek, 'Understanding Russian Subversion: Patterns, Threats, and Responses', *RAND Corporation*, February 2020, pp. 2–3.

13 US Senate Select Committee on Intelligence, 'Report on Russian Active Measures Campaigns and Interference in the 2016 U.S. Election—2: Russia's Use of Social Media', 2019, pp. 12–13; EU vs Disinfo, *Election Meddling and Pro-Kremlin Disinformation: What You Need to Know*, 2019, p. 4.

14 Henning Lahmann, '"Information Operations and the Question of Illegitimate Interference under International Law', *Israel Law Review* 53 № 2 (2020): 189–224 (195).

15 Such as RT or Sputnik in the Russian remit. See: Maria Hellman and Charlotte Wagnsson, 'How Can European States Respond to Russian Information Warfare? An Analytical Framework', *European Security* 26 № 2 (2017): 153–70 (155–57).

16 Media Ajir and Bethany Vailliant, 'Russian Information Warfare: Implications for Deterrence Theory', *Strategic Studies Quarterly* 12 № 3 (2018): 70–89 (77–79).

DOI 10.30966/2018.RIGA.11.2

when conducting influence operations' between non-Western entities and liberal democracies, with Russian endeavours to affect voters during the 2016 British EU Referendum and 2016 US presidential election a case in point.[17]

What Are the Roles and Narrative Agendas of RT and Sputnik?

RT and Sputnik are media outlets, funded by the Kremlin, that are ostensibly tasked with conveying the Russian perspective on global news and events. Both outlets can be considered what Carter and Carter term 'outward-facing propaganda apparatuses'[18]—news platforms operated by foreign adversaries tasked to influence the public in target countries. Many suggest that the outlets act as vectors for the Kremlin to pursue its *Russkiy Mir foreign policy objectives through public diplomacy.*[19]

As assets of the Kremlin, the outlets can be seen as purveyors of *strategic narratives.* These are 'a means by which political actors attempt to construct a shared meaning of the past, present, and future of international politics to shape the behaviour of domestic and international actors'.[20] Styling themselves as alternative, 'underdog' platforms that seek to balance homogeneous and Russophobic mainstream Western media coverage,[21] both the outlets' core narrative agendas have been characterised as 'antagonistic', 'anti-West', and geared towards engendering cynicism in

17 Daniel Cohen and Ofir Bar'el, *The Use of Cyberwarfare in Influence Operations* (Yuval Ne'eman Workshop for Science, Technology and Security, Tel-Aviv University, 2017), p. 10; US Senate Committee on Foreign Relations, 'Minority Report on Putin's Asymmetric Assault on Democracy in Russia and Europe: Implications for U.S. National Security', 2017, pp. 17–23.

18 Erin Baggott Carter and Brett L. Carter, 'Questioning More: RT, Outward-Facing Propaganda, and the Post-West World Order', *Security Studies* 30 № 1 (2021): 49–78.

19 Mona Elswah and Philip N. Howard, '"Anything That Causes Chaos": The Organizational Behavior of Russia Today (RT)', *Journal of Communication* 70 № 5 (2020): 623–45.

20 Alister Miskimmon, Ben O'Loughlin, and Laura Roselle, *Strategic Narratives: Communication Power and the New World Order* (Routledge, 2014), p. 6.

21 Ilya Yablokov, 'Russian Disinformation Finds Fertile Ground in the West', *Nature Human Behaviour* 6 № 6 (2022): 766–67.

domestic audiences, destabilising Western states, and eroding the liberal international order.[22]

Research documenting the most common antagonistic strategic narratives pushed by RT and Sputnik generally converges on the idea that their narration cultivates an image of political dysfunction within Western societies. Narratives of government failure and incompetence, increasing social conflict, and pervasive violence and crime appear most frequently.[23] Supranational political institutions such as the EU or NATO are also often negatively portrayed by the outlets, depicted as hypocritical, internally disorganised, and often uncaring for or exploitative of member states in their eastern regions.[24] Indeed, for countries more proximate to Russia in geographical and historical ties, Soviet history and nostalgia are also often weaponised.[25] They are also far more likely to receive provocative narratives such as touting the rise of Nazism or Russophobia in their respective countries. These narratives are typically projected in states with higher proportions of Russian-speaking populations.[26]

Wagnsson and Barzanje propose that the antagonistic strategic narratives can generally be divided into three main types: destruction narratives, which focus on creating the image of a state as weak, chaotic, and subordinate; suppression narratives, which craft an image of a state as strange and morally bereft; and direction narratives, which reward geopolitical behaviour by the state that is desirable for the Kremlin.[27]

22 Elswah and Howard, 'Anything That Causes Chaos'.

23 Gordon Ramsay and Sam Robertshaw, 'Weaponising News: RT, Sputnik and Targeted Disinformation', *Kings College London,* 31 July 2019.

24 Corina Rebegea, '"Question More—But Not Too Much": Mapping Russia's Malign Master Narratives in Central and Eastern Europe', *Challenges in Strategic Communication and Fighting Propaganda in Eastern Europe* (Amsterdam: IOS Press, 2019), pp. 75–83.

25 Vladimir Sazonov, Sergii Pakhomenko, and Igor Kopytin, 'Between History and Propaganda: Estonia and Latvia in Russian Historical Narratives', *The Russian Federation in Global Knowledge Warfare* (Springer, Cham, 2021), pp. 397–423.

26 Rebegea, 'Question More'.

27 Charlotte Wagnsson and Costan Barzanje, 'A Framework for Analysing Antagonistic Narrative Strategies: A Russian Tale of Swedish Decline', *Media, War & Conflict* 14 № 2 (2021): 239–57.

DOI 10.30966/2018.RIGA.11.2

These strategies have been observed in the narration of several states.[28] These general narrative currents are reflective of and instrumental in what are commonly understood as the Kremlin's objectives to be seen on the world stage as a great power and a defender of traditional Christian values.[29] Thus, these trends reinforce the outlets' positions as geopolitical tools for the Kremlin.

What Is the Psychological Basis for the EU's Decision to Ban RT and Sputnik?

Clearly, RT's and Sputnik's agendas towards European states are antagonistic and seek to paint a negative portrait of the region. It is, therefore, understandable that there is concern regarding the possible consumption—through directly accessing the outlets or exposure through more local or social media—of their narratives by European audiences. Generally, there is a consensus that consuming these narratives should give rise to destabilising psychological effects in audiences, such as fomenting feelings of frustration or fear or eroding trust within society.[30] However, it is important to reflect critically on the evidence that supports this decision.

Who is engaging with RT and Sputnik, and how do they respond psychologically to the outlets' narration? These are pertinent questions to ask in light of the EU ban. It is vital to consider what it would mean for the tenability of the ban should evidence suggest a lack of potential harm in consuming their narration.

28 Aiden Hoyle, Helma van den Berg, Bertjan Doosje, and Martijn Kitzen, 'Portrait of Liberal Chaos: RT's Antagonistic Strategic Narration about the Netherlands', *Media, War & Conflict*, OnlineFirst (2021); Edward Deverell, Charlotte Wagnsson, and Eva-Karin Olsson, 'Destruct, Direct and Suppress: Sputnik Narratives on the Nordic Countries', *Journal of International Communication* 27 № 1 (2021): 15–37.

29 Hoyle et al., 'Portrait of Liberal Chaos', p. 5.

30 Aiden Hoyle, Helma van den Berg, Bertjan Doosje, and Martijn Kitzen, 'Grey Matters: Advancing a Psychological Effects-Based Approach to Countering Malign Information Influence', *New Perspectives* 29 № 2 (2021): 144–64.

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Who are RT's and Sputnik's audiences and why do they access the outlets?

It is important to consider, firstly, that current research suggests that the size of RT's and Sputnik's direct audience—those people who have RT and Sputnik within their day-to-day media diet—is thought to be small. Although it is difficult to capture accurately the size, studies have begun to shed some light on the issue. According to Crilley et al., RT's audience is 'extremely small in Western European countries and […] not growing except in the Middle East, and in Syria and Iraq particularly'.[31] In a large-scale study on a nationally representative survey of Swedes, Wagnsson showed that 7 per cent of respondents had engaged with RT or Sputnik, and 2 per cent accessed the sites on a somewhat regular basis.[32] This echoes similar findings showing that the outlets' direct social media engagement is also relatively limited and appears to be inflated artificially by bot accounts.[33]

Notably, research characterising these audiences has shown that they typically skew younger and male, with men aged 18–29 being by and large the most common demographic within the 'engaged' group. Those who consumed RT and Sputnik regularly were also comparatively less trusting of news media, politicians, and public institutions than respondents who did not regularly consume RT or Sputnik.[34] This emerging profile of RT and Sputnik consumers parallels the profile distilled in the existing literature characterising consumers of broader alternative, right-wing media.[35]

Yet, research that scrutinised RT and Sputnik audiences has shown that pigeonholing the audiences more closely would miss a great deal of

31 Rhys Crilley, Marie Gillespie, Bertie Vidgen, and Alistair Willis, 'Understanding RT's Audiences: Exposure Not Endorsement for Twitter Followers of Russian State-Sponsored Media', *International Journal of Press/Politics* 27 № 1 (2022): 220–42.

32 Charlotte Wagnsson, 'The Paperboys of Russian Messaging: RT/Sputnik Audiences as Vehicles for Malign Information Influence'. *Information, Communication & Society,* OnlineFirst (22 February 2022).

33 Crilley et al., 'Understanding RT's Audiences'.

34 Wagnsson, 'Paperboys of Russian Messaging'.

35 Heidi Schulze, 'Who Uses Right-Wing Alternative Online Media? An Exploration of Audience Characteristics', *Politics and Governance* 8 № 3 (2020): 6–18.

DOI 10.30966/2018.RIGA.11.2

nuance in them. Notably, Wagnsson showed that RT or Sputnik readers were diverse in gender and age, and they existed at every point of the political spectrum.[36] Moreover, the reasons *why* they engaged with the outlets have also been shown to be very diverse. Emerging in-depth research into the Swedish consumers of RT or Sputnik showed that while a segment of this audience actively endorsed ideology in line with the outlets' narrative trends, the majority were not necessarily ideologically aligned with the outlets. In fact, many regular consumers endorsed beliefs that directly contradict the main tenets of RT's and Sputnik's overarching narrative trends.[37]

Further, different types of engagement with RT and Sputnik have been established. While a segment of the population was indeed driven by an active dissatisfaction with mainstream media reporting and viewed RT or Sputnik as a reliable source of news, other less-concerning profiles were also identified. This ranged from consumers who engaged with the outlets as they simply enjoyed occasionally checking non-mainstream media content to those who felt propelled to keep track of the media landscape as a whole due to a general malaise with media reporting.[38]

Although research into audiences of RT and Sputnik is growing, these emerging findings suggest that both the size and the intentions of the audiences accessing RT and Sputnik should not be overestimated. While much discourse has focused on RT's and Sputnik's 'huge western audience that wants to believe that human rights are a sham and democracy a fix',[39] emerging research suggests that the outlets' readership is perhaps neither as sizeable—certainly in comparison to other media outlets—nor as ideologically monolithic as initially feared.

36 Wagnsson, 'Paperboys of Russian Messaging'.

37 Charlotte Wagnsson, Torsten Blad, and Aiden Hoyle, '"Keeping an Eye on the Other Side": RT, Sputnik, and Their Peculiar Appeal in Democratic Societies', *International Journal of Press/Politics (in press).*

38 Ibid.

39 Matthew Turner, 'To All the Self-Identifying Liberals Cheering about Russia Today's Bank Accounts Being Frozen, Did You Ever Consider Your Own Bias?', *The Independent*, 18 October 2016.

DOI 10.30966/2018.RIGA.11.2

How do audiences respond psychologically to Russian state-sponsored media narration?

These results provide perhaps a reassuring perspective that may help alleviate concerns that large audiences of hostile and untrusting sceptics are being goaded by Russian state-sponsored media. Yet, it is also critical to understand that despite not all of RT's and Sputnik's audiences' consumption being driven by frustration and hostility, they may still be liable to experiencing undesirable psychological effects. Indeed, while there is again relatively little research that directly investigates how audiences consume, interpret, and react to RT and Sputnik narratives, the few studies that have investigated this suggest that the EU's concerns about the potential security threat posed by the outlets may not be entirely unfounded.

To begin with, studies have shown that consuming RT or Sputnik can impact the political attitudes of consumers—even when they are aware of the outlets' intentions. This is concerning given the above literature shows that audiences can access these outlets simply out of curiosity about alternative viewpoints or to expand their media diets. Aleksandr Fisher examined the influence of exposure to RT narratives on the attitudes of American audiences regarding foreign states, and observed that participants who consumed antagonistic narration by RT about Ukraine were significantly lower in their evaluations of Ukraine when compared to people who saw a control text. This effect was found even if participants were informed of RT's background as a propaganda instrument of the Kremlin and its 'anti-Western' narrative agenda.[40]

Such findings were reaffirmed by later studies. Carter and Carter observed that exposure to RT narratives led to large shifts in the foreign policy attitudes of American audiences towards a direction more favourable to the Kremlin. For example, they saw a significant increase in support for US withdrawal from its leadership position in global politics, an idea

40 Aleksandr Fisher, 'Demonizing the Enemy: The Influence of Russian State-Sponsored Media on American Audiences', *Post-Soviet Affairs* 36 № 4 (2020): 281–96.

DOI 10.30966/2018.RIGA.11.2

that is often endorsed in Russian state-sponsored media narration.[41] Again, this effect was robust even when it was disclosed to participants that RT is a media outlet directly sponsored by the Kremlin. Petersen and Allamong extend these findings, showing again that exposure to RT can elicit attitudinal shifts in participants, and that exposure to RT narratives on several political issues actually yielded stronger attitudinal effects than the content of more established mainstream news sources.[42]

Moving away from more attitudinal effects to focusing on the potential for destabilising emotional or trust responses, Hoyle et al. have shown that exposure to RT or Sputnik antagonistic narration can trigger negative emotional responses.[43] Particularly pertinent given its use of European audiences, the survey experiment revealed that Dutch, Swedish, and Latvian audiences exposed to various common antagonistic narratives projected by RT or Sputnik were significantly higher on a plethora of negative emotions, such as anger, disgust, and shame, when compared to control respondents who received purely factual information. Alarmingly, these significant differences were shown even after short-term exposure to these narratives.[44]

However, there are also reasons to maintain scepticism regarding the potentially destabilising effects of Russian state-sponsored media, and the necessity of the ban. Firstly, the evidence is not plentiful. As mentioned before, research into the effects of consuming Russian state-sponsored media is sparse and, while it is growing, it probably remains too small to base convincing conclusions on.

Secondly, the evidence is not unanimous. While they did observe shifts in foreign policy attitudes in their American audience, Carter and Carter also saw little impact of RT narratives on attitudes towards

41 Carter and Carter, 'Questioning More'.

42 Erik Peterson and Maxwell B. Allamong, 'The Influence of Unknown Media on Public Opinion: Evidence from Local and Foreign News Sources', *American Political Science Review* 116 Nº 2 (2022): 719–33.

43 Aiden Hoyle, Charlotte Wagnsson, Helma van den Berg, Bertjan Doosje, and Martijn Kitzen, 'Cognitive and Emotional Effects of Russian State-Sponsored Media Narratives in International Audiences', *Journal of Media Psychology* (in press).

44 Ibid.

DOI 10.30966/2018.RIGA.11.2

the president or trust in the stability of the national economy or in the national government. Moreover, Hoyle et al. found few effects of RT and Sputnik narration on trust factors—with a particular lack of effects on trust experienced between different social groups in society. Such results show that exposure to Russian state-sponsored media narration is not *always* effective, particularly for trust—a construct of core relevance when speculating on the potential damage elicited by consuming Russian influence.

Lastly, the evidence is currently also not wholly convincing. Many of these studies have been carried out in small experimental designs, which lack the ecological validity necessary to extrapolate the findings to real-life settings. Within this burgeoning area of research, studies should be done that capture more realistically how people may interact with Russian state-sponsored media narration within their media diet, to draw more accurate conclusions about the necessity of the ban.

What Is the Legal Basis for the EU's Decision to Ban RT and Sputnik?

The Russian invasion of Ukraine is a gross violation of international law,[45] and Russia's systematic information manipulation and disinformation used in its assault on Ukraine are also a significant and direct threat to the Union's public order and security,[46] causing the EU to ban RT and Sputnik on all media outlets.[47]

The restrictive measure to ban RT and Sputnik is not undisputed. Though the outreach of RT and Sputnik narration could potentially have

45 Council of the European Union, 'Legislation concerning Restrictive Measures'.

46 'Ukraine: Sanctions on Kremlin-Backed Outlets Russia Today and Sputnik EU Ban', *European Commission*, March 2022.

47 Article 2f Council Regulation 2022/350 states that 'It shall be prohibited for operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by [RT and Sputnik] including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed'. See Council of the European Union, 'Legislation concerning Restrictive Measures'.

DOI 10.30966/2018.RIGA.11.2

a destabilising effect, it has been argued that the ban is a disproportionate violation of the fundamental human rights of citizens within the EU.

To assess whether the banning of RT and Sputnik outweighs the impact on EU citizens it is crucial to describe the legal framework and the circumstances that could justify the blockage of media outlets by the EU. The impact of RT and Sputnik activities and the subsequent restrictive measure by the EU against Russia will be assessed first via an international law paradigm and second via a human rights law paradigm, thereby including the impact of the restrictive measure on the citizens of the EU.

International law

Can RT and Sputnik narration—as exponents of the Russian informational instrument of power[48]—be considered a breach of international law, and, if so, what measures can be taken in response? International law governs the relations (coexistence and cooperation) between states. Since the narratives do not reach the threshold of threat or use of force, the main standards that can be violated in respect of sovereignty and non-intervention.[49]

Is international law violated?

States are sovereign and equal in legal terms.[50] As a corollary, states are free to make choices in their 'political, economic, social and cultural

48 The EU opines that RT and Sputnik are state-sponsored outlets 'which are under the permanent direct or indirect control of the leadership of the Russian Federation'. Preamble bullet 8, Council Regulation 2022/350, Council of the European Union. See also Björnstjern Baade, 'Fake News and International Law', *European Journal of International Law* 29 Nº 4 (2018): 1357–76 (1361).

49 Russia could also be accused of violating due diligence. However, since the EU has attributed the RT and Sputnik activities to Russia, due diligence is a subsidiary rule to the primary breach of sovereignty by the state (Russia) itself. See also: Corfu Channel Case (merits), Judgment of 9 April 1949, *ICJ Reports* (1949), p. 22.

50 Article 2(1), UN, Charter of the United Nations (1945).

DOI 10.30966/2018.RIGA.11.2

system, and the formulation of foreign policy'.[51] Though this reserved domain is the area that international law leaves to states,[52] it can be limited by customary international law or treaties, one of which is international human rights law (IHRL), including freedom of expression.

To violate the prohibition of intervention, Russian narratives need to infringe the reserved domain of the states of the EU in a coercive manner.[53] First, on the reserved domain: activities that are under the aegis of protecting and furthering human rights are outside the state's reserved domain. Russian expressions of freedom of speech and journalism, including by RT and Sputnik, and even propaganda will therefore not per se violate the reserved domain of European states. However, if the sharing of disinformation or propaganda is intended to interfere with, for example. elections, which are at the core of the reserved domain,[54] it would be an infringement. Second, the infringement must be coercive. Coercion is a specific form of influence and must not be equated with persuasion, criticism, or propaganda. Coercion involves acts 'designed to deprive another State of its freedom of choice, that is, to force that State to act in an involuntary manner or involuntarily refrain from acting in a particular way'.[55] The RT and Sputnik narratives are deliberate acts by Russia, with an intent to change the policies of the EU toward the war in Ukraine. In that sense, the narratives intend to undermine the control of the EU states and hence can be regarded as coercive,[56] even if they fail.[57]

51 Case Concerning Military and Paramilitary Activities in and against Nicaragua, *ICJ Reports* (1986), Para. 205, p. 108.

52 PCIJ, Nationality Decrees in Tunis and Morocco, Advisory Opinion, Series B, *PCIJ Reports* (1923), p. 24.

53 Peter B.M.J. Pijpers, 'Towards a Legal Framework for Influence Operations in Cyberspace', *ACIL* Nº 6 (2022).

54 Igor Popovic, 'The EU Ban of RT and Sputnik: Concerns regarding Freedom of Expression', *European Journal of International Law* (March 2022).

55 Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2nd edn (Cambridge University Press, 2017), pp. 317—19.

56 Peter B.M.J. Pijpers, Influence Operations in Cyberspace: On the Applicability of Public International Law during *Influence Operations in a Situation Below the Threshold of the Use of Force* (Amsterdam, 2021), chapter 6.

57 Schmitt, *Tallinn Manual 2.0,* rule 66 (29), p. 322; Steven Wheatley, 'Regulating the Frontiers of Hybrid-Warfare: The International Law on Foreign State Cyber Operations Targeting Democracy', in *New Technologies: New Challenges for Democracy and International Law*, Cambridge University, 2019, pp. 1–27 (p. 18).

DOI 10.30966/2018.RIGA.11.2

To assess whether Russia has violated the sovereignty of EU member states, sovereignty can be divided into territorial integrity and political independence.[58] Remotely executed activities making use of cyberspace, such as RT and Sputnik narratives, can violate territorial integrity only if they cause damage—physical or functional.[59] Since the narratives merely use cyberspace as a vector, they do not cause damage in a direct manner. Consequently, the notion of territorial integrity is a poor fit to regulate information activities via cyberspace.[60] Political independence, on the other hand, is not related to persons or material but to inherently governmental functions. These are universal state activities, associated with law enforcement, taxation, public order, and national defence.[61] Political independence is violated once another state takes over state functions (usurpation) or interferes with them. Narratives or framed information can therefore violate political independence if these interfere with state functions such as maintaining public order, crisis management, or law enforcement.

While Russian narratives are coercive acts, they do not necessarily infringe the reserved domain of EU states; hence it cannot be stated conclusively that Russian narratives violate the prohibition of intervention. Nor do they violate territorial integrity. The coercive narratives do, however, interfere with the inherently governmental functions of the states of the EU, and hence violate the sovereignty of the states of the EU.

58 PCA, Island of Palmas Case (The Netherlands v United States), II Reports of International Arbitral Awards 829–71 (1928). Arbiter Huber stated (p. 838) that 'Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.'

59 Schmitt, *Tallinn Manual 2.0*. Damage in this sense is related to an infringement to persons, material, or the virtual layers (software, data) of the ICT infrastructure.

60 Peter B.M.J. Pijpers and Bart G.L.C. Van Den Bosch, *The 'Virtual Eichmann': On Sovereignty in Cyberspace, ACIL Research Paper 2020-65* (2020).

61 Harriet Moynihan, 'The Application of International Law to State Cyberattacks: Sovereignty and Non-Intervention', *Chatham House*, 2019, p. 23.

DOI 10.30966/2018.RIGA.11.2

How to respond

The EU's decision to ban RT and Sputnik is not a unilateral act. The EU is responding to an earlier Russian act. The EU has expressed this both in legislation[62] and in public speeches.[63]

International law—in relations between states—recognises three retaliatory acts: retorsions, reprisals (countermeasures), or the use of force. The last can be neglected since the narratives disseminated via RT and Sputnik fall well below the threshold of the use of force;[64] hence using force as an EU measure would be unlawful and disproportionate.

Reprisals are 'coercive measures directed by one government against another State in retaliation for alleged unlawful acts committed by the latter'.[65] It is a measure that normally would be unlawful but justified if taken as a countermeasure against an earlier unlawful act. These countermeasures are coercive but exclude the (threat or) use of force. Though the matter is controversial, countermeasures can only be taken by the injured state and not collectively (as in the case of self-defence deriving from Article 51 of the UN Charter).[66]

A retorsion is a 'legal, but deliberately unfriendly act by one government against another State in retaliation for an equally unfriendly, but lawful act',[67] and includes the severance of diplomatic relations.[68]

The EU ban, in response to a violation of the sovereignty of EU member states, can be assessed as a non-coercive retorsion. Though the EU restrictive measure has a deliberate intent, it will not affect Russian policy

62 Council of the European Union, 'Legislation concerning Restrictive Measures'.

63 'Ukraine: Sanctions'.

64 Though Russia's invasion of Ukraine started an international armed conflict, subject to international humanitarian law, the member states of the EU are not part of or a belligerent party in that conflict.

65 Christopher C. Joyner, 'Coercion', *Max Planck Encyclopedia of International Law*, 2006.

66 François Delerue, *Cyber Operations and International Law,* Cambridge Studies in International and Comparative Law (Cambridge, United Kingdom: Cambridge University Press, 2020), p. 232.

67 Joyner, 'Coercion', bullet 3.

68 Terry D. Gill, 'Non-Intervention in the Cyber Context', in *Peacetime Regime for State Activities in Cyberspace,* Katharina Ziolkowski (ed.), (Tallinn: NATO CCD COE, 2013), pp. 217–38 (p. 230).

DOI 10.30966/2018.RIGA.11.2

or control of RT and Sputnik since the EU limits its actions to the EU and its jurisdiction. The retorsion—unfriendly but lawful[69]—can (contrary to countermeasures) be taken collectively, is not disproportionate, and intends to counter unlawful coercive narratives that interfere with the sovereignty of EU member states.

Human rights law

The sanctioning of RT and Sputnik can also be assessed from a human rights law dimension.[70] In that sense, freedom of expression or receiving these expressions is a fundamental human right recognised in numerous treaties, including Article 19 of the 1948 Universal Declaration of Human Rights (UDHR),[71] Article 10 of the 1950 Council of Europe's European Convention on Human Rights (ECHR), Article 19 of the 1966 UN International Covenant on Civil and Political Rights (ICCPR), and Article 11 of the 2000 EU Charter of Fundamental Rights (CFR). To quote this last Article on freedom of expression and information:

> (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
>
> (2) The freedom and pluralism of the media shall be respected.

Protecting and furthering fundamental human rights, such as freedom of expression, can be at odds with other rights or legal obligations; human rights will have to be balanced against national security or the

69 Joyner, 'Coercion'.

70 Of note, Russia, Ukraine, and the EU states are or were all parties to the UDHR, ICCPR, and ECHR, until Russia's expulsion from the ECHR in 2022. Council of Europe, Resolution on the Cessation of the Membership of the Russian Federation to the Council of Europe, CM/Res(2022)3.

71 UN General Assembly, Universal Declaration of Human Rights (1948) *Resolution 217 A*.

DOI 10.30966/2018.RIGA.11.2

maintenance of public order. In the worst case, fundamental human rights will have to be restricted.

Fundamental human rights carry special responsibilities and duties,[72] and any restriction must be justified[73] and needs to comply with a cumulative test regarding the legality of the restriction, its legitimacy, and its proportionality.[74]

The EU legal basis (legality) for restricting human rights

Restricting fundamental human rights is only possible by law, meaning that the restriction is codified in (national) legislation.[75] Article 19(3) of the ICCPR demands that restrictions 'are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.' In addition, Article 20 provides special grounds for limiting fundamental rights based on the propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Of note, these specific grounds require (additional) codification in national legislation.[76]

Sanctions or restrictive measures have a sound legal basis. These are EU instruments taken by unanimous decisions of the European Council,

72 Article 19(3), UN, International Covenant on Civil and Political Rights (ICCPR), UN Treaty Series (1966); Article 10(2) of the Council of Europe, European Convention on Human Rights, European Court of Human Rights (1950).

73 Human Rights Committee, 'General Comment No. 34: Article 19: Freedoms of Opinion and Expression', *CCPR* (September 2011), bullet 52.

74 Articles 19 and 20, UN, International Covenant on Civil and Political Rights (ICCPR); Human Rights Committee, 'General Comment No. 34'; Kaye, 'Online Propaganda'.

75 See Articles 19(3) and 20 of the ICCPR or Article 52(1) of the EU Charter. The latter reads, 'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms.' Charter of Fundamental Rights of the European Union [2000] OJ C364/01. See also Human Rights Committee, 'General Comment No. 11: Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred (Art. 20)', *CCPR* (1983).

76 Human Rights Committee, 'General Comment No. 11'.

DOI 10.30966/2018.RIGA.11.2

under Common Foreign and Security Policy rules, Article 29 of the TEU and Article 215 of the TFEU.[77] The sanctions against RT and Sputnik refer to 'a significant and direct threat to the Union's public order and security' relaying them to Article 10(2) of the ECHR and Article 19(3) of the ICCPR.

The legitimacy of the EU for restricting human rights

The legitimacy of the EU ban relates to weighing the content against infringements on other rights. After all, while the airing of false news is unwelcome, it is not *ipso facto* a legitimate aim to restrict fundamental human rights in the EU.[78]

The EU ban could be directed against Russian expressions and intentions to propagate war.[79] Propagating for war, as expressed in Article 20 of the ICCPR, is, however, not an airtight match with the EU's urge to ban the framed, misleading, and manipulative narratives of RT and Sputnik.[80] After all, propaganda for war relates to an explicit[81] call for war, irrespective of whether the content is true or false. It is questionable if reference to propaganda for war was the intent of the restrictive measure since (a) it is not explicitly mentioned in the sanction, except for the implied section in recital 7 'to justify and support its aggression against

77 Consolidated Version of the Treaty on European Union [2012] OJ C326; Treaty on the Functioning of the European Union, [2012] OJ C326, Title IV, Restrictive Measures.

78 Björnstjern Baade, 'A Lawful Measure against Propaganda for War', *Verfassungsblog*, 2022.

79 Popovic, 'EU Ban'. See also ICCPR Article 20, UN, International Covenant on Civil and Political Rights (1966). The Article reads: '1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

80 As present in recitals 6, 7, 8, 9, and 10 of the EU Decision and Regulation Council of the European Union, 'Legislation concerning Restrictive Measures'.

81 Human Rights Committee, 'General Comment No. 11'.

DOI 10.30966/2018.RIGA.11.2

Ukraine',[82] and (b) propaganda for war is not explicitly prohibited by law in EU legislation.

Maintaining public order could be another option to legitimise the EU's restrictive measure. Public order is mentioned in Article 10(2) of the ECHR and Article 19(3) of the ICCPR and is (thereby) a more generic ground for restricting fundamental rights. As mentioned above, the RT and Sputnik narratives are coercive in nature and have a clear and deliberate intent to interfere with the political activities of the EU member states, hence undermining the ability to maintain public order.

While the EU has a legal base to issue restrictive measures, the legitimacy is far less obvious. Though some reasons can be deduced, the EU does not articulate how the all-out ban of RT and Sputnik justifies the restriction of fundamental principles of EU citizens.

General Discussion

In the preceding sections we evaluated both the psychological and legal foundations of the EU's decision to ban RT and Sputnik within the European media space. Psychologically, the evidence is inconclusive. Research has shown that the audiences directly accessing RT and Sputnik are small and perhaps driven more by curiosity than malintent. However, there is also a growing relevant body of research that suggests that allowing European audiences to freely consume Russian state-sponsored media narration could constitute a security threat through the elicitation of destabilising psychological effects in these audiences. At present, however, this research agenda is simply too underdeveloped to draw concrete conclusions, but the current trend in research does suggest that caution should be advised.

82 Council of the European Union, 'Legislation concerning Restrictive Measures', bullet 7 reads: 'In order to justify and support its aggression against Ukraine, 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.'

DOI 10.30966/2018.RIGA.11.2

Legally speaking, we concluded that while sharing disinformation or propaganda is not unlawful per se, the RT and Sputnik narratives can be considered coercive. Since the reserved domain was not infringed, this might not amount to a prohibited Russian intervention of EU member states on the part of Russia, as it does violate their sovereignty. A retorsion by an EU member state is therefore a lawful response under international law. However, the EU restrictive measure does not solely address the legal personalities of RT and Sputnik;[83] it also affects EU citizens as the audience of RT and Sputnik by limiting their fundamental human rights. While the sanction stands the test of legality and could be legitimate in response to the need to maintain public order, the measure is poorly justified.

Together, these mirroring perspectives seem to suggest that the decision to ban RT and Sputnik can be supported—grounded in (growing) psychological evidence and sound legal reasoning. Questions remain, however, if the decision is proportional and if the consequences outweigh invoking the sanction.

The EU ban is proportional in the sense that it is of a temporal nature, and that many social media and internet platforms were already in the process of blocking access to RT and Sputnik in the EU,[84] based on corporate policies.[85]

However, the ban does not make a distinction between broadcasting, for example, a sports event and broadcasting a news update containing political narratives or misleading content. All news feeds are prohibited, yet not all media topics relate to an infringement of national security, public order, or the protection of health or morals, let alone incite hatred or propagate war. Similarly, while the ban blocks the outlets for all

83 RT France has filed a lawsuit against the Council of the European Union arguing the EU violates numerous fundamental rights of the EU Charter including freedom of expression (Article 11), freedom to conduct a business (Article 16), right to a fair trial and presumption of innocence (Articles 47 and 48). 'Russia Today Challenges EU Broadcasting Ban before General Court', *EU Law Live* (March 2022): 9585.

84 Chee Siang Ang, 'EU Bans RT, Sputnik over Ukraine Disinformation', *Reuters*, 2022.

85 Sinéad McSweeney, 'Our Ongoing Approach to the War in Ukraine', *Twitter Blog*, 2022.

DOI 10.30966/2018.RIGA.11.2

EU member states, the impact of the RT and Sputnik broadcasts and narratives differs according to member state. Consequently, researchers are not able to tap into RT and Sputnik data to uncover and substantiate the true nature of the framed and manipulative narratives.

Moreover, the ban introduces the potential for retaliation. In their criticism of the ban, the International Press Institute warned that such actions could lead Russia to ban Western media.[86] Days later, this became a reality when Russia restricted access to, among others, the BBC, Deutsche Welle, and Radio Free Europe.[87] This has been viewed as a grave development for the Russian population, as access to accurate reporting is seen as one of the methods to reduce the grip of the Kremlin's propaganda domestically.[88]

A final key consideration here should be the potential of triggering *reactance*—the psychological concept describing a 'motivational state directed toward the re-establishment of the free behaviours which have been eliminated or threatened with elimination'.[89] Essentially, it captures how the experience of frustration arising when one experiences a threat or perceived loss to previously free behaviours can lead to the prohibited behaviour appearing increasingly attractive—a so-called 'forbidden fruit' effect—and to an increase in counteractive behaviour. Several studies have robustly evidenced reactance effects,[90] and importantly for this discussion, a large strand of this research has looked at reactance effects triggered by media censorship.

Research has shown that censoring media publishing unwanted information galvanises information-seeking behaviour through an

86 IPI, 'IPI: Statement on Banning of RT and Sputnik'.

87 Reuters, 'Russia Blocks Access to BBC and Voice of America Websites', 4 March 2022.

88 James Ellingworth, 'Russia Cracks Down on Dissenting Media, Blocks Facebook', *AP News*, 5 March 2022.

89 Jack W. Brehm, *A Theory of Psychological Reactance* (New York: Academic Press, 1966); Andy H. Ng, Mohammad S. Kermani, and Richard N. Lalonde, 'Cultural Differences in Psychological Reactance: Responding to Social Media Censorship', *Current Psychology* 40 Nº 6 (2021): 2804–13.

90 Benjamin D. Rosenberg and Jason T. Siegel, 'A 50-Year Review of Psychological Reactance Theory: Do Not Read This Article', *Motivation Science* 4 Nº 4 (2018): 281–300.

DOI 10.30966/2018.RIGA.11.2

increased motivation to resist censorship.[91] This increased resistance has been associated with a higher demand for media freedom—an important result considering the aforementioned research on Sweden showing that a large segment of RT and Sputnik consumers accessed the outlets purely out of scepticism of the media landscape in general.[92] Other studies have shown that the perception of a threat to or loss of freedom can increase anger and hostility towards the source of the threat/loss.[93] The perceived credibility of the source has also been shown to reduce if it attempts to prohibit freedoms.[94]

Here, then, an uncomfortable paradox may emerge: while the ban was enacted to avert potential damage, its actual implementation may nevertheless elicit both an increased desire to seek and potentially endorse RT's or Sputnik's narratives, and an increased hostility towards the European Union. In this instance, then, the EU would seem hypocritical—particularly so, given it has made public statements criticising other states, for instance, Belarus, for prohibiting the internet and therefore curtailing freedom of speech domestically.[95] This apparently hypocritical image of the EU is something that, as discussed before, the Kremlin has been eager to cultivate in the past. Here we should also reconsider earlier research highlighting that consumers were already comparatively likely to be less trusting of political institutions such as the European Union.[96]

This raises the question: is such a far-reaching and blanket ban worth these (potential) consequences? Or would a more nuanced approach be more advantageous? As mentioned, the extent to which different states

91 See Golnoosh Behrouzian et al., 'Resisting Censorship: How Citizens Navigate Closed Media Environments', *International Journal of Communication* 10 (2016): 23.

92 Wagnsson et al., 'Keeping an Eye'.

93 For example, Christina Steindl, Eva Jonas, Sandra Sittenthaler, Eva Traut-Mattausch, and Jeff Greenberg, 'Understanding Psychological Reactance: New Developments and Findings', *Zeitschrift für Psychologie* 223 № 4 (2015): 205–14.

94 Paul J. Silvia, 'Reactance and the Dynamics of Disagreement: Multiple Paths from Threatened Freedom to Resistance to Persuasion', *European Journal of Social Psychology* 36 № 5 (2006): 673–85.

95 Rob Snyovitz, 'EU Calls Belarusian Internet Decree "A Step in Wrong Direction"', *Radio Free Europe*, 4 February 2010.

96 Wagnsson, 'Paperboys of Russian Messaging'.

DOI 10.30966/2018.RIGA.11.2

are targeted, and indeed the types of narratives that they are exposed to, varies. Ramsay and Robertshaw have shown that certain countries feature more heavily in RT and Sputnik coverage, and Galeotti discusses how the Kremlin has different strategic intentions for states depending on a constellation of factors, including the extent to which they have cultural or historical affinities with Russia.[97] In certain countries, perhaps those that we discussed earlier as more proximate to Russia and that bear the brunt of more hostile or deceptive narration, such a ban might be appropriate. Yet in others introducing a ban may be inconsequential, or worse, only drawing more attention to the outlets' narration and creating problem of reactance.

Alternatively, a more piecemeal approach could have been considered, whereby states under more direct threat, such as those described in Section 2, could adopt a different approach to other states. Hellman and Wagnsson, for example, analysed several response policies that European states can apply to Russian information warfare,[98] ranging in the degree to which they engage with Russian media narration, and to which they target the domestic or foreign audience (how inwardly/outwardly projecting they are). They discuss blocking as one option that is high in engagement and relatively inwardly projecting. However, they also discuss other options—such as naturalising, the strategy of producing a narrative that speaks to the same topic but does not directly contrast an adversary's narrative, and ignoring, simply not engaging with adversarial narratives—as alternative response types that offer states the opportunity to respond to Russian narration without actively engaging with them. Future research might consider investigating counternarratives from the civilian perspective. The ban presents a conundrum for EU policymakers as they must balance stemming Russian antagonistic narration with the potential damage to their image in the eyes of European citizens. In this way, the opinions of ordinary Europeans are very important, and there is merit in investigating European attitudes towards the ban, but also other methods of countering Russian information influence.

97 Ramsay and Robertshaw, 'Weaponising news'; Mark Galeotti, 'Controlling Chaos: How Russia Manages Its Political War in Europe', *European Council on Foreign Relations*, 1 September 2017.

98 Hellman and Wagnsson, 'How Can European States Respond'.

DOI 10.30966/2018.RIGA.11.2

Of course, in a situation where the EU is responding to Russia's invasion, it is logical that any immediate response should display fortitude and power. Indeed, our described alternatives lack the immediacy with which the EU may have felt compelled to respond, given the velocity at which Russia's invasion of Ukraine began. They also, by centring on a less engaging approach, lack the demonstrative, 'statement-like' impact that enacting an unprecedented and far-reaching ban had. They do, however, offer alternative ways of response that are more compatible with the EU's democratic values and circumvent any possible undesirable reactions as a result. They may be considered viable options in states that are considered more robust against, or smaller targets for, Russian influence.

Conclusion

In sum, this article has analysed the psychological evidence and legal foundations upon which the controversial decision by the EU to ban Russian state-sponsored media was taken. Parsing this, we have determined that the ban is supported by sound legal arguments and a body of psychological evidence that is inconclusive yet concerning enough to motivate action. We scrutinised the ban's tenability by examining its proportionality and discussing its potential to trigger a disturbing set of backfire effects, including consequences both for audiences in the Union, but also for the Russian domestic population. Lastly, we discussed whether a less stringent and more nuanced approach, which would allow each state to form its own response, might be more beneficial in the long term. Here, states, where implementing the ban may make strategic sense, would be free to do so, yet other states, where the ban may, in fact, do more harm than good, could pursue alternative methods.

A final closing remark reflects more broadly on the function of the ban. Despite the psychological evidence and sound legality of the EU ban, a worrying thought is that the costs of the measure, related to both its infringement of the fundamental rights of EU citizens and possible Russian repercussions, might be higher than the impact that RT and

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Sputnik narratives might have. That said, in the tumultuous geopolitical period immediately after Russia's invasion, the EU needed to demonstrate visible actions that indicated the seriousness with which this invasion was being taken. Therefore, the EU ban's function as a political signal to Russia—one of action, solidarity, and resolve—should not be discounted.

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