

Joint Programme between the European Union and the Council of Europe Strengthening Information Society in Ukraine



Table of Contents

1ST INTERIM NARRATIVE REPORT	2
I. ASSESSMENT OF IMPLEMENTATION OF ACTION ACTIVITIES.....	5
1.1 EXECUTIVE SUMMARY OF THE ACTION	5
1.2 RESULTS AND ACTIVITIES	ERROR! BOOKMARK NOT DEFINED.7
1.2.1 1-2. Media.....	Error! Bookmark not defined.7
1.2.2 3. Access to information	15
1.2.3 8-11. Data protection	19
1.2.4 4-7. Internet Governance	22
II. BENEFICIARIES / AFFILIATED ENTITIES AND OTHER COOPERATION	25
III. VISIBILITY	26
IV. QUICK RESPONSE MECHANISM	27
ANNEX 1: 1ST INCEPTION REPORT	28

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1st Interim Narrative Report for Contract ENPI/2013/ 329-289

Programme title	STRENGTHENING INFORMATION SOCIETY IN UKRAINE
Programme area	Ukraine
Key stakeholders	State Committee on Television and Radio; National Broadcasting Council; Ombudsman; Verkhovna Rada; National Commission for the State Regulation of Communications and Informatisation (NKRZI); Secretariat of the Cabinet of Ministers; Presidential Administration; Department of Information technologies and e-governance; State Service of Special Communication and Information Protection of Ukraine; National Academy of Judges and the National Academy of Public Administration; Media Law Institute, Independent Association of Broadcasters, Ukrainian Internet Association
Purpose of the programme	To strengthen the protection of human rights and fundamental freedoms through : - greater freedom, diversity and pluralism in the media, - an open, inclusive, sustainable, people-centred and human rights-based approach to the Internet, - an effective system of protection of individuals with regard to their right to privacy and right to control their personal data
Reference number	ENPI/2013/ 329-289
Programme starting date	21 January 2014
Programme duration	23 Months
Implementation	Council of Europe (Directorate General Human Rights and Rule of Law, Information society and action against crime Directorate, Information Society Department)
Programme budget	€ EUR 2 762 056
Date of report	9 March 2015
Author of the report	UPSIS Programme Team

Reporting period	21 January 2014 – 20 January 2015 The progress report complements the inception report and both cumulatively cover all existing activities for the reporting period of 1 year.
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LIST OF ABBREVIATIONS

CoE	Council of Europe
EU	European Union
EC	European Commission
JP	Joint Programme
PBS	Public Broadcasting Service
DP	Data Protection
DPA	Data Protection Authority
AI	Access to public information
AIL	Access to information law
VLAP	Visa Liberalisation Action Plan with EU
IAU	Internet Association of Ukraine
IG	Internet Governance
IGF UA	Ukrainian Internet Governance Forum
ISP	Internet Service Provider
NGO	Non-Governmental Organisation
EPRA	European Platform of Regulatory Authorities
CEC	Central Electoral Commission
EST	Estonia
F	France
NL	Netherlands
SK	Slovakia
SLO	Slovenia
UA	Ukraine
UK	United Kingdom

I. Assessment of implementation of Action Activities

1.1 EXECUTIVE SUMMARY OF THE ACTION

Following its 1st public presentation during the– Conference held on the 1 October 2014, the EU/CoE Joint Programme “Strengthening information society in Ukraine” entered the phase of implementation upon the mutually agreed priorities and the plan of actions.

In the media field the following priorities for the project have been agreed: elaboration and implementation of the strategy for approximation of the media legislation with the European standards, privatisation of the State owned print media, launch of the public broadcasting, digital switchover, improving regulatory and self-regulatory mechanisms, media coverage of elections, transparency of media ownership, improving journalists’ work conditions and preventing violence, community media and new media.

For the access to information field the agreed priorities include: improving the Law on Access to Public Information, reviewing by-laws, supporting legislation on open data and reuse of public sector information, strengthening the oversight mechanism, improving access to some categories of public interest information.

In the field of data protection it was agreed to: drafting of legislative amendments to relevant laws and by-laws, strengthening capacities of the DPA, raising awareness, knowledge and skills (for public officials and general public) on data protection legislation in general and on protecting privacy in the media coverage.

For Internet Governance the two main priorities agreed include: raising awareness and promoting human rights online and strengthening open, inclusive and transparent multi-stakeholder IG dialogue.

Through its activities during the reporting period the Programme has:

- strengthened capacities for the national audiovisual regulator (*facilitating exchanges via EPRA; supporting the elaboration of a National development plan for the audiovisual sphere, enhancing capacities for monitoring of media coverage of the elections, digital switchover, transition to public broadcasting and on information security*);
- supported the launch of a genuine public broadcasting system;
- supported exchanges of best practices regarding protection of journalists in the context of crisis and armed conflict;
- supported the civic monitoring of the media coverage of the parliamentary election;
- supported further improvement of the access to public information legislation and raised awareness on access to information in the open data;
- strengthened capacities of the data protection authority;
- strengthened the implementation of the data protection legislation in the law enforcement and health sectors;
- enhanced awareness and skills on the protection of privacy in media coverage;
- strengthened the national Internet governance dialogue, as well as awareness on human rights for Internet users (by promoting the CoE Guide to human rights for Internet users).

A series of publications have been prepared, from more general ones with an analysis of European standards and obligations and compliance with them (incl. current reforms) in Ukraine, to more specific publications on Freedom of expression and Internet including, the CoE Guide to human rights for Internet users and its explanatory memorandum and the Handbook on European Data protection Law in Ukrainian.

Overall the Programme has coordinated the organisation of 18 events and delivered results at a desirable level, in particular 5 conferences, 4 press conferences, 6 trainings and three study visits. This gives a great sense of fulfillment. 750 people benefited from Programme activities.

The Programme has worked and strengthened partnerships with a large number of stakeholders in four thematic areas. In these four areas it brought together in an inclusive manner the key stakeholders for the formulation and implementation of national policies. It encouraged the national ownership of reforms and initiatives, bringing the dimension of European standards and best practices.

Overall the complex political situation, to a certain extent, has affected the Programmes implementation. As the parliamentary election was held on 26 October, the Programme decided, at short notice, to support a civic monitoring of media coverage of elections. The relationships with the new Parliament and its newly formed Committees were established, but the elaboration of the national strategy for approximation of the media legislation was postponed. Giving the Parliament's central role for the legal reforms, it appeared appropriate to prepare the Strategy under the leadership of the new Parliament.

1.2 RESULTS AND ACTIVITIES

1.2.1 1-2. Media

R 1: A clear strategy for approximation of media legislation to the European regulatory framework is developed by legislators and endorsed by civil society.

The Strategy of approximation of Ukrainian media legislation to European standards has not been developed yet. The programme plans to start this work with the newly elected Parliament and new Parliamentary Committee on Freedom of Speech and Information Policy. The negotiations were carried out with the leadership of the Committee and preliminary agreement was reached on developing the Strategy by the working group under the leadership of the Committee with the expert support provided by the Programme. The Strategy for the development of public information system in the Republic of Serbia until 2016 will be used as an example. The Strategy contains key points on the role of state and media outlets, media ownership, public broadcasting, media literacy, media pluralism. The strategy contains a Strategy implementation Action Plan with sequence and concrete deadlines for adoption and revision of the Laws. The Serbian Strategy is being translated and will be provided to the Parliamentary Committee.

R 2.1: The legal framework for privatisation of government-owned press is put in place.

The Law on privatisation of government-owned press has not been adopted yet, two drafts are tabled in the Parliament and CoE expertise will be requested in the framework of the Programme.

The task to reform the communal press was set in the Programme of the Cabinet of Ministers Activities for 2015 and the Coalition Agreement of the deputies groups and factions of the Verkhovna Rada of Ukraine. For successful reform, a share of the press outlets is needed (15-20%) which would be ready to go through privatisation. Their successful experience of privatisation with positive economic results would impact the results of the reform in Ukraine. Despite the political, financial and economic crises of 2014-2015 in Ukraine the background has been prepared for the process of reforming communal press. In particular, **this applies to the formation of layer of the outlets**, which do not receive grants from local budgets (21%), whose managers are aware of the role and importance of political and economic independence of the media.

The Parliamentary Committee on Freedom of Speech and Information Policy decided to request an official expertise of the CoE of the Draft Law "On the reform of state and communal print media"¹ registered in the Parliament before the first reading².

A series of 4 regional pilot trainings on reform of print press are planned for around 80 communal press outlets willing to undergo privatisation. The trainings are planned for 19-20 February 2015 in Kharkiv, 23-24 April 2015 in Myklolayiv, 11-12 June 2015 in Zhytomyr and Lutsk (2-10 September 2015, TBC) and a concluding conference in Kyiv (20-19 September 2015, date TBC). An online course will be prepared by the trainers (Ukrainian and international experts, 2nd part of the year).



R. 2.2. Legislation and regulatory practices for media coverage of elections are brought in line with the European standards and the EU association-related criteria.

The legislation and practices on media coverage of elections still needs to be improved. No draft laws on the matter have been registered in the Parliament. But the civil society has considerable expert capacities in this field (not least the Media Law Institute). The issue seems to lack attention

¹ No.1123, dated from 01 December 2014

² Draft submitted by MPs M. Tomenko and O. Abdullin

in the period between elections and cannot be addressed immediately before elections. It appears necessary to introduce maximum coordinated regulations on the rights and responsibilities of mass media during all types of elections and the length of political advertising should be fixed.

On 4 December 2014 the National Broadcasting Council published a report on adherence of the TV and radio companies to the legislation on broadcasting during election campaign³. The report was based on the work of the working group on monitoring of broadcasters during the election campaign. The working group included representatives of the National Broadcasting Council and the Civic Council of the Regulator, while the meetings were open to journalists and international election observers. The report mentioned about 300 violations of the legislation regarding media coverage during the election campaign and specified their types and the media responsible. There seemed to be a need to clarify the responsibilities of the National Council and of the Central Election Commission (CEC) in handling complaints regarding alleged violations by media of electoral law. The Programme will provide support to the National Broadcasting Council in strengthening its monitoring capacities.

The Programme supported the civic monitoring by Association Spilnyi Prostir/Equal Access Committee and NGO Telekrytyka.

The results of both monitoring exercises became a useful source of information for the representatives of international organisations and monitoring missions.

The Association Spilnyi Prostir/Equal Access Committee conducted a comprehensive monitoring plan throughout the country, covering all regions (24 oblasts and occupied AR Crimea) and different types of media (television, newspapers, radio and Internet media) during a period of almost 2 months. The CoE expert⁴ provided expert support to ensure the best possible quality in monitoring and reporting.



The results of the monitoring were added to a specifically designed interface which is available at the web-site of the NGO⁵.

In relation to monitoring - data have been analysed and 3 reports were produced and presented at the press conferences in Kyiv.

As this was quite a large monitoring project, the monitoring required coordinated work of 64 specialists (monitors, analysts and coordinators) including 43 women and 21 men in 24 regions and Kyiv.

NGO Telekrytyka monitored the professional standards at the daily and weekly summary news programmes on national TV-channels (one week per month), prepared monthly reviews in respect to journalists' rights and observance of standards of journalism, organised public events and prepared videos/interviews on journalistic standards. This monitoring lasted until 30 November 2014. The experts conducted a full-value monitoring of professional standards

³ <http://nrada.gov.ua/ua/news/radanews/22426.html>

⁴ Rastislav Kuzel, Consultant, Slovakia

⁵ <http://bit.ly/1F5Z5mM>

implementation in daily final news releases of 7 leading national TV channels (“Inter”, STB, ICTV, “Ukraine,” Fifth Channel, and First National)⁶.

Following the 1st Press Conference on 30 September 2014 attended by 15 participants (7 women, 8 man), 2 more press conferences were held on 14 (16 participants: 10 men, 6 women) and 24 October 2014 (10 participants: 5 men, 5 women) to present the preliminary results of the monitoring by 2 NGOs. According to the findings, reported the media provided voters with a diverse range of information about electoral contestants and other relevant political subjects. The time and space devoted to the coverage of the election campaign increased with the approach of election. The channels’ ownership allegedly influenced the materials produced to promote or discredit candidates. Most of these materials were noted on Inter, TRK Ukraine and 1+1. Placing out-door advertisement without mentioning basic information on the ordering customer, was wide spread, allegedly witnessing shadow financing of the election campaign. The campaign debate was less related to respective political programmes, but was largely influenced by the topics of war and lustration.

The problem of paid materials reportedly remained acute. This is also confirmed by the relevant IMI monitoring⁷. Approaching the day of elections, more materials with signs of paid materials were observed at all channels.

On 20 October 2014 the Programme supported the **Round table “Paid materials in mass media during parliamentary election campaign 2014” held**. In overall 55 participants (28 women, 27 men) - media experts, lawyers, civic activists and officials discussed practical ways to reduce the amount of paid materials during election campaigns in Ukraine. The expert contributions on international good practices in countering paid materials and recommendations for Ukraine were formulated by 2 CoE experts⁸. Given the prominent role of media owners in these corrupt practices, an important measure to tackle the issue of paid-for coverage is to further increase the transparency of media ownership. De-monopolisation of the media market controlled by several powerful groups and media tycoons was also recommended. Another area requiring systematic changes is the media oversight and regulation. The role of the media regulator in enforcing these measures is important. In this context its political and operational independence in line with the Council of Europe’s recommendations and the necessary capacities are key. It appears desirable to regulate and set standards of political advertising during election campaign, introducing fines for violations.

In addition the Programme contributed to the **Press Lunch “Parliamentary elections 2014: Media influence” held on 10 October 2014**. The press lunch was attended by 60 participants (36 female and 24 male).

The TV 5th Channel and First National, which observed the journalistic standards better compared to others, were awarded diplomas. Among the print Internet media Fakty and Liga.net were the best in respecting journalistic standards, while "Obozrevatel" magazine, "Korrespondent" and "Komsomolskaya Pravda in Ukraine" were among the worst.

The results of regional monitoring showed that Oblast State TV and Radio Companies were used to promote majoritarian candidates. They did not produce as much paid materials as commercial

⁶ <http://bit.ly/1HsAuYI> - 30.09.2014

<http://bit.ly/1MpfvsH> - 13.10.2014

<http://bit.ly/1BrIkjb> - 16.10.2014

<http://bit.ly/1AZrjJo> - 12.10.2014

<http://bit.ly/1MpfvsH> - 13.10.2014

<http://bit.ly/1NDiTle> - 21.10.2014

⁷ <http://bit.ly/197SwUU>

⁸ Rastislav Kuzel, Consultant, Slovakia;
Boris Navasardyan Consultant, Armenia

channels, but they covered the activities of local authorities too much in electoral period (the phenomenon is called “*parket*”).

R 2.3 Work conditions free from threats and actual violence are promoted via exposure to best practices and reforming legislation on the protection of professional activity of journalists.

According to IMI data, in 2014, 995 violations of journalists rights were recorded most of them in Kyiv, Crimea and Eastern Ukraine. Out of the total number of violations, 286 cases of assaults, 152 cases of censorship and access to information violations, 148 cases of prevention to journalist works and 98 cases of intimidation, 78 cases of kidnaping and hostage. According to Reporters without borders, Ukraine in 2014 was one of the three most dangerous countries for journalists in the world (with Syria and Palestinian Autonomy). This is largely due to the armed conflict in the east Ukraine. Journalists are not sufficiently protected against physical threats or attacks because of their work; there was no effective accreditation or insurance system for the journalists going to the Anti-Terrorist Operation (ATO) zone in Donbas. At the request of the Presidential Administration, the Programme provided information on the Council of Europe standards on accreditation of foreign journalists (CoE Recommendation No.R (96) 4 of the Committee of Ministers to member states on the protection of journalists in situations of conflict and tension, 3 May 1996).

In the context of its “Quick response mechanism” the Programme plans to support the NGOs projects on creating the conditions necessary for journalists to work freely and shielded from threats or actual violence.

Annual South East Europe Media Forum (VIII SEEMF) and Commission for media policy in Skopje

The theme of South East Europe Media Forum (SEEMF) held in Skopje (the Former Yugoslav Republic of Macedonia) on 16-17 October 2014 - *Media in South East Europe: Not enough or too much information?* - offered the opportunity for comprehensive and active discussions covering key topics such as the right to information access, journalism data, privacy and the protection of sources, self-regulation and quality-reporting standards. A special session was devoted to Ukraine and opinion making in times of conflict. Apart from working sessions, SEEMF offered a unique opportunity to meet media CEOs, editors-in-chief, leading journalists, business professionals,



CEOs from companies active in South East and Central Europe, representatives of marketing and public relations agencies, civil society representatives, academics and representatives of state institutions from South, East and Central Europe.

Famous Ukrainian journalists⁹ were the panellists at “Opinion Making in Times of Conflict” devoted to situation in Ukraine. One more Ukrainian representative of the media sphere¹⁰ was a panelist in “Opinion Making in Times of Conflict”. All participants made presentations during the panel in context of the Commission on Media Policy: Strengthening the Press under Pressure of War and Repression.

⁹ Roman Skrypin and Denis Kazanskyi

¹⁰ Yevgen Fedchenko, Dean of School of Journalism of the National University “Kyiv Mohyla Academy”

During the Forum Ukrainian reporter ¹¹ was awarded by the Central European Initiative and South East Europe Media Organisation for Outstanding Merits in Investigative Journalism in 2014. On Saturday 18 October 2014, SEEMO organised the annual Commission on Media Policy (hereinafter the Commission) under the topic Strengthening the Press under Pressure of War and Repression.

In addition, the photo exhibition “RIGHT for PROFESSION: Maidan’s Times” was presented during three days of the forum. The exhibition showed Ukrainian journalists carrying out their professional duties during Maidan. The exhibition was arranged by the National Union of Journalists of Ukraine and the Independent Media Trade Union of Ukraine. All participants prepared analytical papers based on materials of the forum.

As a result of participation of Ukrainian delegation, current situation in the sphere of media in Ukraine was presented to almost 200 participants of the Forum.

Owing to participation of Ukrainian delegation, the links between Ukrainian and European journalists, professional associations and experts were established. The journalists and media experts had the opportunities for direct networking with their colleagues from South –Eastern Europe. The journalists’ capacity in the spheres of journalists’ safety, access to public information and privacy was reinforced¹².

Legal support to media in temporarily occupied territories within ATO zone

Legal consulting was provided to the representatives of print and online mass media by the Ukrainian Association of Press Publishers on the matters related to their work at the occupied and liberated territories. Work of domestic social and political mass media is completely blocked at the temporarily occupied territories. Resumption of mass media work is very complicated after liberation of the territories. Some of the main obstacles of mass media work are as follows; destruction of business facilities and almost complete termination of any business; trouble with the operation of printing offices; destruction of the system of mass media delivery/distribution; personnel losses because some employees have left their place of residence, are under threat of violence and are afraid of returning etc.

R 2.4: New media and community media have the sufficient legal basis as well as clear editorial criteria stipulating their roles and responsibilities enabling them to develop further as a complementary source of independent, professional information contributing to public debate.

The Programme is planning to address this priority through grants under the “Quick response mechanism”. The major focus being awareness raising and sharing best practices targeting broadcasters and other relevant stakeholders.

R 2.5: Legislation for audio-visual media including de-monopolisation in the media sector is further reformed and implemented in the light of European standards.

On 14 October 2014 Parliament adopted the *Law on Amendments to Laws on disclosure of the final beneficiaries of legal entities and public figures (n 5114)*. It came into force on 25 November 2014 and requires legal entities to provide information on owners and the structure of ownership during 6 month from entry into force. The date will be compiled in a single State Registry. The Law introduces the administrative responsibility for failure to comply.

¹¹ Anna Babinets

¹² News at CoE web-site <http://bit.ly/1AcCz60>

CoE expert¹³ provided support and recommendations to the National TV and Radio Broadcasting Council in the elaboration of the National development plan for the audio-visual sphere, working directly with the Working group, and contributing to a discussion of the draft plan with representatives of the audio-visual sphere (16-18 December 2014).

The expert recommended taking measures to address the monopoly of Zeonbud, which seems to be in breach of the EU regulatory framework for electronic communications. Moreover he emphasised the need to move away from the State media and establish public broadcasting independent of political forces and with sufficient funding to fulfil its public service mission. The expert called to preserve all incumbent broadcasters during the switchover as a matter of priority, before reserving spectrum for pay TV channels.

R 2.6: The basis for governance and management of public service media entities is created, supported by modern management and governance arrangements, and expansion into new platforms.

The draft law on Amendments to the Law “On Public TV and Radio Broadcasting” was adopted in the 1st reading on 13 January 2015, whereas some of the amendments voiced orally are worrying as they may delay and distort the reform, diluting the very essence and role of the public broadcasting. The period before the 2nd reading will be key for preserving the core provisions of the law (for that the role of (external) political messages is important – EU and CoE). One of the central missions of the public broadcasting service is to unite the country. Preserving the regional State TV and Radio companies under the label “local public broadcasters” will be counterproductive, in the current circumstances may be dangerous, compromising the efforts to establish public broadcasting in the country.



The High level international conference “Launch of the public broadcasting in media Ukraine. The countdown” held on 12 December 2014 for 156 participants

The conference was held on 12 December 2014 jointly with the CoE project financed by the Government of Canada. It allowed taking stock of the situation in implementation of the Law of Ukraine “On Public TV and Radio Broadcasting” after the deadline set by the law for transition from state to public broadcasting, identifying problems and designing solutions. The Vice Prime Minister and Minister of Culture Viacheslav Kyrylenko reiterated commitment to implement this major reform in the information sphere in 2015, and Deputy Chair of the Verkhovna Rada Oxana Syroid reassured that amendments with improvements to the Law will be passed quickly. The participants agreed that the major focus of the reform should be on ensuring independence of the Supervisory Board as well as securing financial and editorial independence of the NTCU in line with European standards. The number of CoE experts contributed to the Conference 14. The participants included representatives of the Delegation of the European Union to Ukraine, European Broadcasting Union, Embassy of Canada, Embassy of Belgium. Ukrainian participants included MPs, representatives of the Parliamentary Committees, State Committee on TV and Radio, National Television and Radio Broadcasting Council, NTCU, NRCU, State TV and Radio Company “Cultura”, oblast state TV and radio companies, Presidential Administration, Ministry of

¹³ Ad van Loon, Consultant, Netherlands;

¹⁴ Ad van Loon, Consultant, Netherlands

Claudio Cappon, EBU Vice-president, Consultant, Italia

Boris Bergant, EBU Vice-Chair, Consultant, Slovenia

Andriy Shevchenko, Center for Public Media President, former MP of convocations V-VII, Consultant, Ukraine

Igor Rozkladay, lawyer of the Media Law Institute, Media Group, Reanimation Reform Package, Consultant, Ukraine

Justice, Ministry of Finance, NGOs and mass media. In total 156 persons, including 77 men and 88 women¹⁵.

The Project will support a broad promotional campaign of the public broadcasting, presentation of a new brand of the TV Channel (future public broadcaster), regional media tour of Director General of NTU Zurab Alasaniya. Also, a series of capacity development activities for the international news block will be held.



Promotional campaign will be based on production of quality video materials on public broadcasting and Ukrainian channel of public broadcaster including 15 long on-air promos, 15 short on-air promos, ID's - full broadcasting set (5,10,15 sec long) and promotional film (3-5 min long). Preparation, replication and distribution of informational booklets about public service broadcasting, its values and standards for different groups of population will be prepared and distributed.

Public presentation of a new brand of the TV Channel (future public broadcaster) is planned for presenting a new TV Channel (future public broadcaster), new programmes, web-site, standards etc. The video materials and promotional materials will be presented at the event.

In context of the **regional media tour**, the Director General will visit 23 municipalities to meet the employees of Oblast State TV and Radio Companies. Majority of the Regional State Television and Radio Companies' staff perceive NPSU as a threat to their future. He will introduce the topic of public broadcasting, its advantages, values and standards, and most importantly, how implementation of public broadcasting might affect their future, will they lose their jobs, will their qualification be relevant to work in the new environment etc. The tour will start after the public presentation.

Three trainings will be held for the team of the **international newsroom** by the best international and Ukrainian CoE experts¹⁶ on the following topics: 1) Effective methods of television reportage preparation. 2) Comprehensive coverage of the top topic (from the original source search and provision of accurate/full information to the direct inclusion of an expert / person from the scene). 3) Work with the search engines and databases. For timely and high quality voice-over (dubbing) of stories and programmes, a sound recording and editing station (Avid Pro Tools) will be purchased for the International news.

R. The capacity of Regulator in Audio –visual sphere is developed

Expert workshop for the representatives of the television and radio sphere of Ukraine held on 17-18 November 2014 for 39 participants (21 men and 18 women)

The representatives of the National Council of Television and Radio Broadcasting of Ukraine, members and top executives of the regulator, Council of Europe's experts and governmental executives took part in this seminar. The sessions were devoted to monitoring of media coverage of the elections, digital switchover, transition to public broadcasting and information security. Two CoE experts contributed to the event¹⁷ and intervened on the role of the regulatory bodies, monitoring, sanctions and the regulator's mechanisms for monitoring media coverage of

¹⁵ News at CoE web-site <http://bit.ly/1CYREy8>

¹⁶ Yevgen Fedchenko, Consultant, Ukraine; Natalia Gumenyuk, Consultant, Ukraine

¹⁷ Rastislav Kuzel, Consultant, Slovakia;
Andrzej Krayevski, National Broadcasting Council of Poland, Consultant, Poland

elections, gave a series of recommendations aimed on increasing the independence of the regulator and strengthening its capacity to monitor the media coverage of elections, using effective measures against offenders, spoke about freedom of expression standards and hate speech. The participants focused also inter alia on transition to public broadcasting in Ukraine and digital switchover. According to the survey carried out among the participants after the event, they considered the module on public broadcasting the most informative. According to participants' assessment, they have increased their knowledge on public broadcasting and the role of the regulator by almost 50% and the knowledge on monitoring during election campaign and transition to analogue TV by 30%¹⁸.

EPRA yearly membership fee 2014 for the National Council of TV and Radio Broadcasting covered

On an exceptional basis, the Programme supported the EPRA yearly membership fee 2014 for the National Council of TV and Radio Broadcasting. The membership in EPRA facilitates contacts and exchange of best practices among the European audio-visual regulators.

Elaboration of the National development plan for the audio-visual sphere

CoE expert¹⁹ provided support and recommendations to the National TV and Radio Broadcasting Council in the elaboration of the National development plan for the audio visual sphere (see R 2.5).

In addition to the recommendations related to de monopolisation (see R 2.5), the expert called to guarantee the freedom of movement of television / audio visual media pursuant to the Audio-visual Media Services Directive and the European Convention on Trans frontier Television. Also he pointed that "must carry" obligations should meet clearly defined general interest objectives and shall be proportionate, transparent and subject to periodical review. Finally the expert recalled that even though the protection of national security is a legitimate aim for imposing restrictions under Art.10 of the European Convention on human rights, these restrictions should be proportionate to the aim pursued.

¹⁸ News at CoE web-site <http://bit.ly/1Hsrqml>

¹⁹ Ad van Loon, Consultant, Netherlands

1.2.2 3. Access to information

The Programme welcomes the recent positive developments in the area of information rights protection in Ukraine:

- Elaboration of a five-year Human Rights strategy (2015-2020). The preparation of the strategy follows a consultative process led by the Government and involving civil society and the Ombudsman's office, with the support of the Council of Europe and UN (Human Rights Monitoring Mission in Ukraine);
- Approval of the Action Plan for implementation of the Open Government Partnership initiative in 2014 – 2015 by the Cabinet of Ministers of Ukraine taking up the commitment to ensure proper implementation of the international Open Government Partnership Initiative ensuring access to public information, preventing and combating corruption and developing e-democracy;
- Elaboration of the draft Law “On Open Use of Public Funds” providing conditions and a procedure for securing access to information on the use of public funds by administrators and recipients of state and local budget funds, economic entities of state and communal ownership, as well as mandatory state social insurance funds. It is established, in particular, that information released in line with this Law shall be prepared by administrators and recipients of State Budgets funds of Ukraine; budget of the Autonomous Republic of Crimea and local budgets; bodies of Pension Fund; enterprises; as well as mandatory state social insurance funds. These bodies shall submit the information to post it on the single web portal for the use of public funds²⁰ ;
- Additional safeguard are provided by adopting the new law on Public Prosecutors' office of Ukraine in line with European standards.

Having in mind the abovementioned the Programme during this reporting period provided expert assessment of current legislation in the field of access to public information, with a specific focus on the issue of independent oversight mechanism.

The national partners reiterated their commitment to the Programme. The Programme maintained an intensive co-operation with the Ombudsman Office on access to public information and data protection issues. On other hand, it has to be underlined that insufficient human resources within the Ombudsman's office slightly limited immediate operational capacity in implementing capacity building activities for its staff.

The main activities were conducted as initially planned and were successfully implemented.

R 3.1 - The legal framework for access to public information is further improved, with focus on harmonisation with privacy protection norms.

The Ukrainian Law is a strong one as measured by the RTI Rating, an internationally recognised methodology for assessing the strength of right to information legislation based on international standards.²¹ At the same time, as it is underlined by the national and CoE experts and civil society, there remain some problems in applying the Law in practice, due in part to some of the shortcomings in the legislation, including the fact that it lacks a strong oversight mechanism.

In view of further reinforcement of the legal framework, the Programme has provided expert support in the elaboration of the **Concept paper of amendments** (*Concept Paper for the Draft Law on Improvement of Certain Provisions of Legislation on Access to Public Information*). CoE expert²² prepared a detailed analysis – expanded Concept paper on the basis of the document initially prepared by the Office of Ombudsman.

²⁰ Law No. 0949

²¹ See www.RTI-Rating.org.

²² Dmytro Kotlyar, Consultant, Ukraine

The Concept paper takes stock of the current state of enforcement of the law, reviews relevant international standards and best practices and suggests ways for improvement. The goal is to strengthen the access to information framework by removing inconsistencies, ambiguities in the Ukrainian law as well as to fill important gaps in the legal regulation. One of the main proposals included in the Concept Paper is to designate the Ombudsman office as the oversight authority. Currently, the resources of the Commissioner are not sufficient to conduct the information oversight function and the body lacks some of the requisite powers for this, but these shortcomings were deemed to be less problematical and easier to overcome. The proposed solution is considered as a transitional one, until such time as the Constitution could be amended to pursue the second option – creation of a special oversight body (ex. Information Commissioner).

The concept paper was **presented and discussed at two meetings** of the Expert Council by the Ombudsman's Office respectively held on 8 and 15 December 2014 (17 participants: 9 women and 8 man and respectively 13 participants: 8 women and 5 men), with the support of the Programme. The follow up discussion dedicated to the issue of regulation for the oversight body was organised on 22 December 2014, with the support of the CoE project financed by the Government of Canada.



The first public discussion of the Concept paper is scheduled for February 2015, followed by a debate involving parliamentarians. After that a draft law of amendments is expected to be elaborated and tabled in the Parliament. It is important to be vigilant so that the current level of law is preserved and further strengthened, not weakened. The stakeholders both on the government side and in civil society believe that the momentum for further enhancement of the legislation is right.

In addition the issue of the legislative reform was streamlined through the following activities:

- “Information society: Challenges and priorities for reform”, International conference, 1st Programme Presentation, Session on Access to public information and data protection, (1 October 2014, Kyiv, 15 participants: 6 women and 9 men);
- Ukrainian Internet Governance Forum (IGF UA, 3 October 2014); presentation of the draft law on access to information in the open data at the panel on “Human rights and Internet” (30 participants: 17 women, 13 men) by CoE expert²³. The presentation focused on guarantees of free re-use of public sector information, duties of officers responsible for processing access to information requests to publishing open data, duty of all public information holders to publish open data documents on their web-sites, government standards for open data documents and authority responsible for open data infrastructure, guarantees for personal data protection when dealing with open datasets.



²³ Dmytro Kotlyar, Consultant, Ukraine

R 3.2 - The independent oversight gap in the law is bridged via strengthening the capacity of the Representative of the Ombudsman on Access to Information to effectively uphold information rights in the public interest, conducting awareness activities etc.

Following the positive developments in the reforming of the prosecutor's office in Ukraine with adoption of the Law on the Public Prosecutor's Office of Ukraine aiming at reducing prosecutorial functions with regard to supervision of observance and application of the laws (the so-called "general supervision") the Ombudsman's office is entrusted with the right to do reports (protocols) about the violation of the right of access to information (according art. 212-3 of the Administrative Code). The changes to legislation require the efforts in educating the public officials and public in general on new provisions.



The Programme provided continuous support to the Ombudsman's office in strengthening the institution through developing and dissemination of public awareness materials. A practical guideline on classified public information for public officials that would deal with access to

public information requests was prepared by the Expert Council by the Ombudsman printed and distributed with the support of the Programme.

R 3.3 - The capacity of the public officials to implement the law on access to public information is enhanced.

A series of trainings for public officials is scheduled for first half of 2015 aimed at equipping them with the knowledge and skills to raise the quality of response to information requests.

R 3.4 - NGOs create a sustainable platform promoting the application of the access to information law.

The Programme plans to facilitate coordination among the state authorities, civil society and donor organisations to monitor the Law "On Access to public information". A special coordination meeting has been convened for end January.

The Programme is also planning to support NGOs in promoting and monitoring the implementation of the access to information law, in particular through the grants planned under the Quick response mechanism.

R 3.5 - Journalists get further training and toolkits on the application of the access to information law.

To address the gap in training of journalist on access to information the Programme has launched a series of capacity building activities for journalists on how to exercise the right of access to information and how to integrate the right to know into journalistic activities and advocacy strategies. Ukraine has taken some positive steps to improve the legal framework which enables the freedom of expression and the work of journalists and the media. There are two codes of journalistic ethics in Ukraine: the Code of Ethics of Ukrainian Journalists and the Code of Professional Ethics of Ukrainian Journalists. According to the results of an online survey held in

August 2014 by Internews²⁴ journalists are aware of the ethics code. The number of journalists familiar with the ethics code has increased from 2012 to 2014 (from 73% up to 80%). Nevertheless, the share of editorials accepting ethics code of journalism is still low (38%). The survey has identified the further need in trainings for journalists.

As regards the legal literacy of journalists including on access to public information they are generally aware of legal national and international standards of freedom of information. The awareness of the Ukrainian legal framework on information and access to public information has increased since 2012 – from 83% to 90%.

The Programme has conducted a training session “Access to public information and protection of the right to privacy in mass media” in Zaporizhia on 22 December 2014 for 40 participants (18 women and 22 men) from eastern Ukraine regions. The topics covered included international standards for the right to freedom of expression and information and the right to respect for private life; transparency of information, including personal data, under the laws of Ukraine on corruption; national legal framework on access to public information and on data protection; information about the candidates: what information is publicly available and should be provided on the requests for information; case law on the right to freedom of expression and information and right to respect for private life.



²⁴ An online survey of Ukrainian journalists to study journalists’ conception of standards of journalism, interaction with media audience, journalists’ perception of condition of freedom of speech, external and internal factors, that have an influence on quality of journalists’ work and implementation of their role in society, including labor relations, level of job compensation, ethical principles of journalism, level of journalists’ professional knowledge and knowledge of media legislation concerning access to public information, defamation, handling with personal data etc. at <http://umedia.kiev.ua/english/media-research/634-online-survey-of-ukrainian-journalists-in-2014-showed-less-censorship-but-still-high-influence-of-authorities-on-the-content.html>

1.2.3 8-11. Data protection

R 8.1. Appropriate amendments to the law are passed/implemented and separate pieces of legislation and by-laws enabling the adequate implementation of the data protection legislation are enacted.

R 8.2. New pieces of legislation having implications in the field of privacy and data protection are assessed by data protection experts.

The Law on Data protection has been amended several times, including in 2014²⁵. As a result of these amendments it is now more consistent with the international standards for the protection of personal data. The CoE expert²⁶ recommended further improvements in order to make it more operational. She suggested waiting a couple of months in order to properly evaluate the implementation practice.

The Programme will support drafting of legislative amendments to relevant laws and by-laws in close cooperation with the Ombudsman, the Parliament, other relevant institutions, expert community and the public.

The Programme has translated Ukrainian and edited the Handbook on **European** Data protection Law. It will be published in February 2015.

R 9.1 Effective oversight of the law and independence of the supervisory authority(ies) are secured

Currently, the Data Protection Authority – Ombudsman, seems to enjoy sufficient guarantees of independence, however its capacities, human (6 persons only as of 1 November 2014) and financial, are far below the expected level, considering the rapid development of information technologies and the fact the abolished Authorised State Body on Data protection used to have 35 (at best even more than 50) staff members.



However, the Programme welcomes the positive developments in Ukraine addressing the shortage of the data protection personnel in the Ombudsman's office by strengthening the Office with additional 4 members (10 persons as of 20 January 2015).

In this respect, the Programme continues to maintain the dialogue with the Government of Ukraine paying the special importance to the issue of effectiveness of data protection mechanism which has to be enhanced through allocation of appropriate budget, human and other resources needed to raise the level and standards of the effectiveness of the work of the Ombudsman's office.

Additionally, the Programme staff regularly is taking part in the expert meetings organised within the missions of experts of the European Commission and EU member states in Ukraine assessing the country's progress in meeting the criteria of the second part of the action plan on visa liberalisation with the EU in order to provide in order to coordinate the efforts in improving data protection safeguards and mechanisms in Ukraine.

²⁵ The amendments adopted by the Verkhovna Rada on 13 May 2014 to the Law of Ukraine "On protection of personal data"²⁵ included the notion of consent of the data subject and extended the competencies of Ombudsman to the private sector.

²⁶ Marie Georges, Consultant, France ; recommendations formulated on 1 October 2014 (International Conference and 1st Steering Committee), on 3 October 2014 (IGF UA) and on 14 November in a working report/memo.

In supporting the on-going reforms in Ukraine aimed at strengthening protection of human rights and meeting the commitments and obligations before the Council of Europe, the programme continues cooperation with the Ombudsman's office in strengthening its institutional capacities of the data protection supervisory authority (DPA) through organising the study tours, exchange of experiences with the international peers, increasing the exposure of the state authorities and general public to educational and awareness raising activities on data protection.

The Programme supported the **participation** of Representative of the Ombudsman for Data Protection (DP)²⁷ in the **36th International Conference of Data protection authorities** (13 - 16



October 2014). He participated in both the closed (preparatory) session and the conference. As a result Ukraine applied to GPEN (Global Privacy Enforcement Network) aiming at strengthening international cooperation and coordination of national authorities for personal data protection and established operational contacts with DPA from Europe and beyond. Cooperation on developing materials based on CNIL (French DPA) experience in order to inform the public about their rights in the field of personal data protection has been launched.

R 9.2 Appropriate oversight and handling of requests by the supervisory authority(ies)

The DPA took its first decisions in particular with regard to the list of categories of persons covered by the requirements of notification. The oversight institution has devised an interesting working plan (including studies of data processing in the fields of law enforcement, health and education). A chapter on data protection is included in the annual Ombudsman's report and a special separate report is planned.

In 2014 the DPA provided over 3000 hot line consultations, conducted 53 on-site inspections. 928 complaints were received by the Office resulting in initiation of 270 proceedings and issuance of 89 regulations.

The recent reports on the Ukrainian DPA's activities demonstrate the tendency of the Office to raise its visibility by conducting monitoring visits, to educate the stakeholders by providing their compliance recommendations (the model procedure for processing of personal data has been drafted for personnel services), speaking at the sectorial seminars (for representatives of law enforcement bodies, healthcare and lawyers). They also prepare reports on compliance with data protection laws by key players in particular industries.

The work was conducted mainly in the public sector. Guidance for processing human resources' data and the use of fingerprints were reportedly produced. In the law enforcement numerous violations with fingerprints were reported. Apparently they are not deleted from databases. Apparently there are also problems with databases of patients. There seems to be little practice and insufficient resources to work in the private sector. Banks are particularly difficult to work with.

The Ombudsman's Office has been actively involved in the sectorial regional training sessions for law enforcement, health sector and advocated organised through the programme (see below).

²⁷ Markiyany Bem

R 10.1 Development of sectorial guidelines and recommendations



The Programme organised 2 sectorial regional training seminars in Dnipropetrovsk on 18-19 December 2014 (for Dnipropetrovsk, Kirovohrad and Zaporizhia oblasts) in cooperation with the Ombudsman's Office. The 1st training targeted law enforcement officials (60 participants: 16 women and 44 men) and the second health sector representatives (80 participants: 64 women and 16 men). These training sessions enhanced the knowledge of law enforcement and health practitioners on data protection legislation and good practices. The topics covered included international and national standards for the data protection, procedures on data processing in the law enforcement field, problems related to the data processing of in the law enforcement field, national and ECtHR case law.

R 11.2 Media actors are exposed to the Recommendations throughout the country and their understanding of the balancing of rights is increased.

The Programme organised a one day training session on coverage of private life in the media and protection of the right to privacy for 27 journalists (9 man and 18 women) and media lawyers in Lviv on 20 October 2014, in cooperation with the Ukrainian Commission of the Journalists Ethics and NGO "Regional Press Development Institute". It took place on the eve of the parliamentary election²⁸ and supported the implementation of the "Recommendations on the protection of privacy in media coverage" developed in 2012 by a team of international experts commissioned by the Council of Europe, national experts of the Media law institute and national stakeholders such as



journalists, bloggers, mass media associations, other NGOs and the Journalists' Ethics Committee. 2 Ukrainian legal experts²⁹ moderated the training, providing an overview of international standards for freedom of expression and the right to respect for private life, explaining the definition of "the public interest" and its importance for identification of privacy protection limits. A special focus was on the related case law of the European court of human rights and the national judicial practice.

In addition the Programme conducted the second training session in Zaporizhia with 40 participants (18 women and 22 men) for 1 day on 23 December 2014. It was organised in cooperation with the Ombudsman's Office, Ukrainian Commission of the Journalists Ethics, and NGO "Regional Press Development Institute". As the result of the 2nd session in addition to the international good practices and standards relating to coverage of private life in the media and protection of the right to privacy the journalists were trained and equipped with the toolkit on access to information law.



²⁸ 26 October 2015

²⁹ Liudmyla Opryshko, Consultant, Ukraine
Liudmyla Pankratova, Consultant, Ukraine

1.2.4 4-7. Internet Governance

The Internet Governance activities focused on strengthening the national multistakeholder dialogue and promoting the CoE Guide to human rights for Internet users.

R. 4.1-4.3 Internet governance and human rights courses are included in the curricula of the National School of Judges, respective curricula of the National Academy of Public Administration, and the three Regional Institutes of Public Administration; increased knowledge of relevant State authorities about Internet governance and human rights standards of the Council of Europe, and the related European Court of Human Rights case-law; Access opened for Ukrainian officials to enrol in Internet governance e-learning training course for legal professionals developed through CoE HELP programme.

Constructive relationship has been established with the National School of Judges and the National Academy of Public Administration in view of elaborating of Internet governance and human rights courses for judges and public officials / decision-makers. The courses will be elaborated during a period of 6 months in 2015, together with relevant training materials. The exact methodology and format of the courses will be defined by the respective groups of experts in charge of elaboration of the courses. The groups will include international and national experts as well as experts from the beneficiary institutions.

A publication of the Guide to human rights for Internet users and its explanatory memorandum were translated into Ukrainian and edited. The Guide in Ukrainian has been regularly distributed among recipient institutions during programme activities, including the IGF UA. The publication on the case-law of the European Court of Human Rights has been translated into Ukrainian and distributed among partner institutions, including the National School of Judges.

R. 5.1-5.2 Increased knowledge and awareness of Internet users on Internet governance and human rights adopted and promoted by CoE; general public in Ukraine benefit of the CoE Compendium of Internet Users' Rights

The debate during the IG session of the 1st Project Presentation - International Conference "Information Society: Challenges and Priorities for Reform" on 1 October 2014 (15 participants: 6 men, 9 women) contributed to raising awareness on the CoE standards for Internet users. The IG session was moderated by Chair of the board, Internet Association of Ukraine³⁰. A CoE expert³¹ intervened on IG (human rights, social and security aspects), and the link between human rights and cyber security and inclusive IG mechanisms. The discussion also pointed to the topic of safety online for children and the responsibilities of State, Internet service providers (ISPs) and civil society. The relevant CoE standards were referred to, in particular the Guide to human rights for Internet users and the Human rights guidelines for ISPs. One of the two main priorities agreed for the Programme focuses precisely on raising awareness and promoting the human rights on line. It foresees the preparation of an analytical study on mechanisms of implementation of the CoE Guide, in particular its provisions on remedies; specialised courses on Internet and human rights as well as public debates and training activities.

The human rights panel of the 5th Ukrainian Internet Governance Forum (IGF UA) on 3 October 2014, organized by the Programme (30 participants: 17 women, 13 men), focused on the CoE Guide to Human Rights for Internet Users, introduced by the moderator, CoE expert³².

³⁰ Tetyana Popova

³¹ Vladimir Radunović, Consultant, Serbia

³² Tanel Tang, Consultant, Estonia

The CoE Guide on human rights for Internet users was presented at the Conference “Safe Internet for children – it is possible” on 10 December 2014, International Human Rights Day. It was organised by Internet Association of Ukraine (IAU) and Google Ukraine. The discussion focused on partnerships for ensuring safe internet for children (including State, professional associations, civil society, academia, private sector and international actors). The new website on cyber security and Internet literacy ProInternet as well as relevant CoE resources were presented (Game “Wild web woods”³³ and CoE action and standards for children’s rights³⁴). The focus of the project was presented including analytical studies on mechanisms of implementation of the CoE Guide and remedies for violation of human rights online; specialised courses on Internet and human rights, public debates, training activities as well as support to strengthening open, inclusive and transparent multi-stakeholder IG dialogue.



The CoE publication "Freedom of expression and the Internet" by Prof. Wolfgang Benedek and Dr Matthias C. Kettemann has been translated and prepared for printing. A set of relevant CoE recommendations in the IG area have been translated (in particular the CoE Guide to human rights for Internet Users and its explanatory memorandum as well as Human rights guidelines for ISPs).

The CoE publication "Freedom of expression and the Internet" by Prof. Wolfgang Benedek and Dr Matthias C. Kettemann has been translated and prepared for printing. A set of relevant CoE recommendations in the IG area have been translated (in particular the CoE Guide to human rights for Internet Users and its explanatory memorandum as well as Human rights guidelines for ISPs).

R 6.1 Increased knowledge and capacity of the Internet service providers to protect human rights and Internet governance standards as adopted and promoted by the CoE

The Internet service providers contributed to the IG Panel during the 1st Programme presentation on 1 October 2014 and to the Conference “Safe Internet for children – it is possible” on 10 December 2014.

They will be invited to the future activities aimed at promoting the Guide to human rights for Internet users. And specific awareness raising activities are planned for ISPs. The active interest and implication of the Internet Association of Ukraine will facilitate the future efforts aimed at the ISPs.

R 7.1. Enhanced awareness and dialogue of the participants in the Ukrainian Internet Governance Forum on Internet governance principles and human rights standards of the Council of Europe.

The Programme supported the 3rd International Forum “Media for Information Society” organised by the INGO “European Media Platform” as a pre-event to the Ukrainian IGF, on 2 October 2014.

³³ <http://www.wildwebwoods.org/popup.php?lang=ua>

³⁴ <http://www.coe.int/t/dg3/children/>

A CoE expert³⁵ contributed to discussion on self-regulation by Internet industry based on her experience with the Internet Watch Foundation and another CoE Expert³⁶ intervened on privacy and data protection on Internet. An expert brainstorming on creation of a regional/international IG lab/school in Ukraine and other educational regional and national needs was held on 4 October 2014 in Radomysl castle.

The Programme supported the 5th Ukrainian Internet Governance Forum (IGF UA) held on 3 October 2014. It organised a panel on human rights online, where the keynote presentation was made by the moderator, CoE expert³⁷, who presented the CoE Guide to Human Rights for Internet Users. Other CoE experts intervened at IGF UA: one made a presentation on surveillance³⁸, one spoke about the experience of the UK's Internet Watch Foundation with regard to harmful content³⁹, and one spoke about draft law on access to information in open data⁴⁰. Moreover the Programme facilitated the preparation of the panel "Strengthening democracy through Internet" and of the panel "Mechanisms of e-democracy...". At this last panel the CoE expert⁴¹ presented examples of efficient platforms of e-democracy.

R7.2. Enhanced participation of the Ukraine key stakeholders in the international Internet governance and human rights debates: Internet Governance Forum, European Dialogue on Internet Governance (EuroDIG)

The Programme supported the participation of representatives of Ukraine⁴² in the conference "Challenging media landscape" held in Manchester on 17-18 November 2014. The conference dealt with a number of topics covered by the Programme, in particular privacy and surveillance, freedom of expression online, protection of journalists' sources, practices of regulators, public service media, new media. The presentations delivered by Ukrainian representatives analysed the freedom of speech in Ukraine in connection with current challenges and in light of the CoE standards. Based on the outcomes of the Conference, the experts sent their reports with recommendations formulated for Ukraine.

A publication "Integration of Ukraine into European Information Society: challenges and tasks" was prepared in partnership with NGO Ukrainian Association of International Law and Institute of International relations.

³⁵ Eve Salomon, Consultant, UK

³⁶ Marie Georges, Consultant, France

³⁷ Tanel Tang, Consultant, Estonia

³⁸ Marie Georges, Consultant, France

³⁹ Eve Salomon, Consultant, UK

⁴⁰ Dmytro Kotlyar, Consultant, Ukraine

⁴¹ Tanel Tang, Consultant, Estonia

⁴² Professor Dr Andrii Paziuk Institute of International Relations / Taras Shevchenko National University of Kyiv, Consultant, Ukraine

Olga Kyryliuk, PhD student from the Institute of International Relations / Taras Shevchenko National University of Kyiv, Consultant, Ukraine

II. Beneficiaries / affiliated entities and other cooperation

The relationship with the beneficiary institution and other partner institutions has further been strengthened. Cooperation concerned in particular the setting up of a public broadcasting system, privatisation of print media and access to public information.

The Programme has been registered by the Ministry of Economic Development and Commerce on 17 December 2014. The State Committee on TV and Radio Broadcasting has submitted a report to the Ministry in the first half of January positively assessing the implementation of the Programme.

The national audio-visual regulator – National Council on TV and Radio broadcasting benefited from a series of activities related to EPRA, National development plan for the audio-visual sphere, public broadcasting, monitoring of media coverage of the elections, digital switchover, information security.

Constructive and fruitful cooperation has been established with the new Parliament and its newly formed Committees, in particular the Committee of Freedom of Expression and Information Policy and the Committee of Informatisation and Communication. This cooperation is expected to be materialised through a series of future initiatives and events. The priority will be given to the elaboration of a national strategy for approximation of media legislation with European standards.

The National Television Company of Ukraine and the 1st National Channel have been key partners for the introduction of a genuine public broadcasting system. The relationship with the journalists' community has been further strengthened at the practical level through a series of events, including a study visit, on a variety of issues including safety of journalists, protection of privacy in media coverage etc.

Cooperation with the Institution of the Ombudsman has been further strengthened and intensified on access to public information and data protection issues.

Cooperation with civil society actors has been enhanced, especially on the issue of access to public information, civic monitoring of the media coverage of the parliamentary election, public broadcasting reform, Internet governance.

The professional associations, in particular the Internet Association of Ukraine, but also the private sector actors (in particular Administrator of domain UA, Google Ukraine) as well as civil society actors (incl. European Media Platform) have contributed to promoting the Guide to human rights for Internet users.

The State Service for Special Communication and Protection of Information has participated in several events (on Internet Governance and public broadcasting) and has officially requested to be part of the Steering Committee.

The appointment of a Minister of Information Policy (on 2 December 2014) has been closely followed as well as the related public debate. Although the new Ministry is not officially defined as a partner institution, considering its scope of competencies, it makes sense to integrate it to the Steering Committee.

The Programme has actively contributed to the regular meetings of donors in the media field. Moreover it has convened in cooperation with the CoE media project funded by Government of Canada a regular meeting of stakeholders on access to public information (gathering public institutions, NGOs and the donor community actors). This inclusive approach is characteristic for all the thematic pillar activities of the Programme (media, data protection, access to information and internet governance).

III. Visibility

During reporting period, the Programme had the following visibility activities:

1. On January 8, 2015 the Programme Facebook page was created⁴³.
2. The programme also had published 8 news items about the activities held on The Council of Europe Office in Ukraine website⁴⁴.
3. Also the programme team had reposted its news on the official page of the CoE Information Society Department⁴⁵.
4. The project had published two publications, including the Guide on Human Rights of Internet Users, collective monograph entitled "Integration of Ukraine into European Media Informational Environment: Challenges and Tasks which are in line with the projects key activities".
5. On every event the programme's team disseminates branded folders, pens and notepads. For the 2015 New Year the team produced greeting cards and business-dairies with key information about CoE and EU Programme as well as eco-bags in order to popularize its activities among key partner institutions.
6. 4 press conferences were organised by the Programme.
7. Programme leaflet is being prepared for publishing.
8. The Programme had started the work on two more publications.
9. Programme web-site development is in progress.
10. For the majority of the events the Programme's team prepares press-announces and press and post releases.
11. The mailing list with the key programme's contacts had been produced and is used for dissemination of the announcements and information on Programme activities.

Media Advisories and Press Releases are prepared regularly for Programme events. EU visibility is ensured and the Joint Programme logo is present on banners, publications, reports, invitation letters, during activities and meetings. The flags (EU, CoE and Ukrainian) have been produced and are used during official meetings.

A number of interviews were provided to Ukrainian national TV and radio channels by programme staff and experts, in particular:

- 1) Interview of Programme Manager, to Telekrytyka web-portal⁴⁶
- 2) CoE expert to Telekrytyka web-portal⁴⁷
- 3) A video on the 1st Presentation of the Programme, 5th channel, Window to Europe⁴⁸.

⁴³ <https://www.facebook.com/CoEUPSIS?fref=nf>

⁴⁴ <http://www.coe.int/en/web/kyiv>

⁴⁵ <https://www.facebook.com/pages/Information-Society-Group/771851256242082>

⁴⁶ Roman Chlapak https://www.facebook.com/video.php?v=603864099714653&video_source=pages_finch_main_video

⁴⁷ Eve Salomon, Consultant, UK <http://novostivideo.ru/video/839380>

⁴⁸ <https://www.facebook.com/video.php?v=603858736381856>

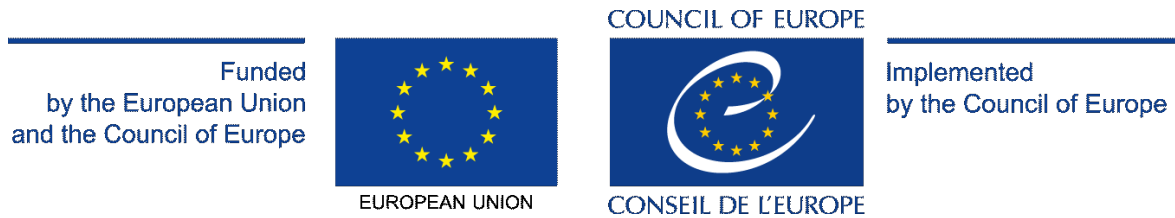
VI. Quick response mechanism

In the framework of the quick response mechanism, and based on the needs identified during the reporting period, a proposal of topics for grants to be allocated to NGOs, media, analytical centres has been defined (max. from 4.000 to 55.000 Euro). It includes the following thematic lines:

1. Raising professionalism of media in covering the issues related to the European integration, in particular the reforms aimed at compliance with CoE commitments and obligations and for the implementation of the requirements of the EU-UA Association agreement and of the Visa Liberalization Action Plan with EU;
2. Supporting impartial and independent reporting in eastern and southern Ukraine;
3. Developing and enhancing sustainability and innovation of new media;
4. Developing and enhancing sustainability of community media;
5. Supporting the establishment of a genuine public broadcasting system, including its regional dimension;
6. Increasing transparency and efficiency of transition to digital broadcasting including the improvement of regulatory practices;
7. Creating the conditions necessary for journalists to work freely and shielded from threats or actual violence (safety of journalists);
8. Improving the conditions of for fair and balanced media coverage of local elections in 2015;
9. Enhancing implementation of the access to public information legislation at the national and local levels;
10. Monitoring and analysis of implementing the data protection legislation in different sectors. Priority will be given to the projects targeting the following sectors : retail commerce, telecommunication, law enforcement, healthcare, finance;

A call/calls for proposals will be launched. The representatives of the CoE Secretariat in Strasbourg, as well as of the EU Delegation in Kyiv will be dully involved at the stage of agreeing the terms of reference and selecting the winners. The CoE will conclude Grant Agreements with each selected applicant individually, after finalisation of the evaluation.

Annex 1



Joint Programme between the European Commission and the Council of Europe for Ukraine:

“STRENGTHENING INFORMATION SOCIETY IN UKRAINE”

Inception Report for Contract ENPI/2013/ 329-289

Programme title	STRENGTHENING INFORMATION SOCIETY IN UKRAINE
Programme area	Ukraine
Key stakeholders	State Committee on Television and Radio; National Broadcasting Council; Ombudsman; Verkhovna Rada; National Commission for the State Regulation of Communications and Informatisation (NKRZI); Secretariat of the Cabinet of Ministers; Presidential Administration; Department of Information technologies and e-governance; State Service of Special Communication and Information Protection of Ukraine; National Academy of Judges and the National Academy of Public Administration; Media Law Institute, Independent Association of Broadcasters, Ukrainian Internet Association
Purpose of the programme	To strengthen the protection of human rights and fundamental freedoms through : - greater freedom, diversity and pluralism in the media, - an open, inclusive, sustainable, people-centred and human rights-based approach to the Internet, - an effective system of protection of individuals with regard to their right to privacy and right to control their personal data
Reference number	ENPI/2013/ 329-289
Programme starting date	21 January 2014
Programme duration	23 Months
Implementation	Council of Europe (Directorate General Human Rights and

	Rule of Law, Information society and action against crime Directorate, Information Society Department)
Programme budget	€ EUR 2 762 056
Date of report	14 November 2014
Author of the report	Roman Chlapak, Programme Team Leader
Reporting period	21 January – 1 October 2014

LISTS OF ABBREVIATIONS

CoE	Council of Europe
EU	European Union
EC	European Commission
CM	Committee of Ministers
JP	Joint Programme
OSCE	Organisation for Security and Co-operation in Europe
USAID	United States Agency for International Development
PBS	Public Broadcasting Service
DP	Data Protection
DPA	Data Protection Authority
AI	Access to public information
VLAP	Visa Liberalisation Action Plan with EU
IG	Internet Governance
IGF UA	Ukrainian Internet Governance Forum
ISP	Internet Service Provider
NGO	Non-Governmental Organisation
UAPP	Ukrainian Association of Press Publishers
RPR	Reanimation Reforms Package

TABLE OF CONTENTS

1.	Background information	32
1.1.	Beneficiary country and institution(s)	33
1.2.	Contracting authority	33
1.3.	Implementing organisation	33
1.4.	Programme team	33
2.	Executive Summary and recommendations	35
3.	Review of programme design	37
3.1.	Objectives to be achieved (Overall Objective, expected results).....	37
3.2.	Assumptions and risks	38
3.3.	Methodology	38
4.	Inception period preparatory activities.....	40
4.1.	Set-up of the Programme Team	40
4.2.	Set-up of the Programme Office	41
4.3.	Bilateral and multilateral meetings.....	41
5.	Work plan priorities	43
5.1.	General background.....	43
5.2.	Freedom of expression and freedom of media	44
5.3.	Access to Public Information	50
5.4.	Data Protection	52
5.5.	Internet Governance.....	55
6.	Quick response mechanism.....	58

1. Background information

The European Commission and the Council of Europe have implemented several Joint Programmes in Ukraine which dealt extensively with assistance in the fields of media and data protection. The current EU/CoE Joint Programme is partly a continuation of earlier Joint Programmes such as:

- Promotion of European Standards in the Ukrainian Media Environment, 01 September 2008 – 31 December 2012
- Promoting the Democratic Process in Ukraine and South Caucasus States, DDH/2005/113-934, 28 December 2005- 28 April 2008;
- Strengthen democratic stability in Ukraine, B-701/2003/3060-2 No. CRIS 75496,: 2 December 2003 - 31 May 2006;
- Strengthening the protection of social and human rights, 20 February 2002 – 19 August 2004.

The USAID funded U-Media programme implemented by Internews Network is so far the largest on-going media programme in Ukraine (\$ 14,000,000). It started on 1 October 2011 and is expected to last until 30 September 2016. The operational coordination between donors in the media field is done through quarterly media donor meetings, to ensure complementary and avoid duplications. The CoE media programmes have been coordinating donors in the field of access to public information.

The European Commission and Council of Europe signed an Agreement for the implementation of the action entitled “Strengthening information society in Ukraine” on 20 December 2013. The total eligible cost for this Joint Programme is € 2 750 000. On 1 February 2014, the Council of Europe has received 1`003,984.00 Euro from the European Union. Due to the events on Maidan and political instability, during February – March, the special conditions were established in the Council of Europe Office in Ukraine and the hiring of the personnel was delayed. The Joint Programme effectively started on 16 June 2014, when the Team Leader commenced his work in Kyiv. The programme team started in full capacity on 28 August 2014.

In addition to the EU/CoE Programme, the CoE is implementing another programme in the media field - the programme “Integration of European standards in the Ukrainian Media Environment”, financed by the Government of Canada. The programme started on 27 March 2013 and will last until 30 April 2015.

Both current CoE programmes work in close synergy in supporting the media sector reforms.

1.1. Beneficiary country and institution(s)

Ukraine

Target institutions:

- State Committee on Television and Radio;
- National Broadcasting Council;
- Verkhovna Rada;
- Ombudsman ;
- National Commission for the State Regulation of Communications and Informatisation (NKRZI);
- Secretariat of the Cabinet of Ministers;
- Presidential Administration;
- Department of Information technologies and e-governance / Ministry of Regional Development, Construction and Housing and Communal Services;
- State Service of Special Communication and Information Protection of Ukraine
- The training institutions – National Academy of Judges and the National Academy of Public Administration will also benefit from the programme;

The major target groups from civil society include

- the Media Law Institute;
- the Independent Association of Broadcasters;
- the Ukrainian Internet Association.

Final beneficiaries: general public, civil society, journalists and bloggers, private sector

1.2. Contracting authority

The European Commission (EC).

1.3. Implementing organisation

The CoE is responsible for the implementation of the programme and the use of the programme funds under the contract with the European Commission. Within the Secretariat of the CoE in Strasbourg, the responsibility is with Directorate General Human Rights and Rule of Law, Information society and action against crime Directorate, Information society Department.

1.4. Programme team

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2. Executive Summary and recommendations

Freedom of expression has improved in Ukraine since spring 2014. In April 2014, the Parliament adopted the law on public broadcasting, voted amendments to more than 50 laws substantially reinforcing the system of access to public information and strengthened the data protection system. However the law on privatisation of state owned press is still pending and the legal framework on elections still has to be further reformed.

The Ukrainian authorities are committed to instigating reforms in line with European standards. The major reforms have been initiated but need to be successfully completed (Public Service Broadcasting running, data protection authority strengthened etc.). The road map for reforms in the media sector of the reanimation reforms package (RPR), major civil society initiative, confirms the general priorities agreed for the Joint Programme (JP). A window of opportunities for reforms, including in the field of information society, opened in Ukraine despite the general challenges linked to the conflict in the east, occupation of the Crimea and a tense geopolitical situation around the country. The President of Ukraine elected at fair and democratic election in May 2014 and the new parliamentary majority expected following parliamentary elections should create favorable conditions for the implementation of the reforms.

Due to the events on Maidan and political instability, in February–March, special conditions were established for the Council of Europe Office in Ukraine and recruitment had to be postponed. The Team Leader⁴⁹ started in Kyiv mid-June and the Programme Team was hired in July-August 2014. The inception meetings were carried out with partner institutions in summer, and the 1st Steering Committee was held on 1 October, provisionally adopting a working plan.

During the inception period, and especially in September 2014 first activities were held contributing to strengthening the multistakeholder Internet Governance (IG) dialogue, raising awareness on human rights of Internet users, preparing the digital switch-over and improving the system of data protection.

The 1st Programme presentation on 1st October 2014 provided an opportunity to publicly discuss and confirm the programme priorities. The 1st Steering Committee on 1 October approved these priorities and provisionally approved the Working plan.

In the media field the programme will support:

- the elaboration and implementation of the Strategy for approximation of the media legislation with European standards;
- the provision of an expert opinion on the draft law on privatisation of the print media; training on modern management and governance models;
- civic monitoring of the media coverage of the parliamentary election; the elaboration of self-regulatory Recommendations for media coverage of elections and the reform of election law;
- favourable working conditions for journalists free from threats and actual violence through training, exchange of best practices and legal reforms;
- a fully functioning public broadcasting service through capacity-building and training as well as raising public awareness (on goals and benefits of PBS);
- the elaboration of a new strategy (“development plan”) for the national audio-visual sphere; strengthening the audio-visual regulator through analytical support, capacity-building and training;
- development of the new media and community media.

In the field of access to public information (AI) the programme will support:

- further improvement of the legislation (including secondary legislation);

⁴⁹ Roman Chlapak, CoE Administrator

- setting up an independent oversight mechanism and strengthening of its institutional capacities, through training and exchange of best practices;
- awareness raising and educational efforts.

In the field of data protection (DP) the major focus will be on effective enforcement in compliance with VLAP requirements (2nd phase). The programme supports:

- strengthening the institutional capacities of the data protection supervisory authority (DPA) through expert support and coaching;
- exchange of experiences, training and finalisation of a manual;
- increasing the exposure of the state authorities and general public to educational and awareness raising activities on data protection;
- further improvement of the legal framework;
- disseminating and training on the Recommendations on the protection of privacy in the media coverage.

In the IG field the programme will focus on

- Raising awareness and promoting the CoE Guide to human rights for Internet users, in particular through
 - 1) a study on implementation of the Guide and related remedies,
 - 2) translation of relevant materials,
 - 3) public debates,
 - 4) specialised courses and pilot trainings. Public officials and judges will be specifically targeted (in particular through adapted training courses, incl. online) as well as children and Internet Service Providers (ISPs);
- Strengthening multistakeholder dialogue, including through the support of Ukrainian representatives' participation in international fora;
- Providing assistance at the level of strategy and legal framework in the field of information society.

3. Review of programme design

3.1. Objectives to be achieved (Overall Objective, expected results)

To strengthen the protection of human rights and fundamental freedoms through:

- greater freedom, diversity and pluralism in the media;
- an open, inclusive, sustainable, people-centred and human rights-based approach to the Internet;
- an effective system of protection of individuals with regard to their right to privacy and right to control their personal data

It contributes to the implementation of reforms linked to commitments before the CoE, to the Association Agreement with EU and Visa liberalisation action plan with EU (VLAP)⁵⁰.

The programme's objectives cover a large part of the problems with which the Ukrainian media sector has been confronted and which should be tackled. To achieve these objectives and to deliver the expected results, the programme relies on the CoE expertise and commitment of the national authorities and inclusion of all relevant stakeholders, including the civil society and the private sector (Internet business and technical communities).

The programme has three components:

- A. Freedom of Expression and Freedom of the Media
- B. Internet Governance
- C. Data Protection

In addition a quick response mechanism - funds not included in the working plan activities, will allow the team to address additional stringent needs, providing assistance in particular to media and NGOs.

Expected results:

- A strategy for the approximation of media legislation to the European regulatory framework developed and implemented;
- Progress as regards the elimination of state or authority-owned media made;
- Safeguards for fair and balanced media coverage of elections in line with relevant European standards and the EU-Ukraine association-related criteria⁵¹ developed;
- Means to ensure the protection of working conditions of journalists against threats and violence promoted with good practices and proposals for legal reforms;
- The legal framework to ensure the right to access public information improved;
- Internet governance and human rights courses included in the Curricula of national institutions;
- Knowledge and awareness of Internet users of their human rights over the Internet increased;
- Capacities and knowledge of Internet service providers on Internet governance and Human rights standards of the Council of Europe strengthened;
- Participation of national key stakeholders including government, parliament, civil society, media representatives and general public in the international Internet governance and human rights debates enhanced;

⁵⁰ The EU-Ukraine Visa Liberalisation Dialogue was launched on 29 October 2008.

⁵¹ EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement includes a priority to take early steps to establish clear rules for a balanced media access for electoral competitors.

- Data protection law reviewed and reformed in accordance with international and European standards in the field;
- Independence and capacity of the Ombudsman (Parliament Commissioner for Human Rights) overseeing data protection strengthened;
- Data protection is implemented by sectors such as law enforcement, health, financial services, ICTs and employment;
- Recommendations on the protection of privacy in the media disseminated and the related training carried out.

3.2 Assumptions and risks

The Joint Programme is based on the assumption that the Ukrainian authorities are determined to conduct reforms in the media sector as well as in the fields of data protection and Internet Governance in light of European standards, to comply with obligations and commitments before the CoE, EU – Ukraine Association Agreement and Association agenda as well as Visa liberalisation Action Plan with EU.

The Programme's objectives are ambitious and cover a large part of the issues with which the Ukrainian media sector has been confronted for many years. The assistance on data protection will build up on the previous work. To achieve its objectives at least partially and to deliver the expected results, the programme relies equally on CoE expertise and strong commitment on the part of the national authorities, civil society, Internet business and technical communities.

To counter risks, the programme will rely on the successes of previous assistance provided by the CoE to Ukraine.

The major risks include the overall geopolitical risks around Ukraine and the internal political stability risks. The start of the programme was precisely delayed because of Maidan events. At the time special conditions were established in the Council of Europe Office in Ukraine and the hiring of the programme personnel was delayed.

The successfully conducted presidential and parliamentary elections in line with relevant international standards are expected to consolidate the capacities for reforms. In the same time the ongoing conflict in the east, the occupation of the Crimea and the overall geopolitical tensions constitute sizable challenges to the authorities and the society as a whole.

3.3 Methodology

The programme acts through a comprehensive approach by components (linked to results to be achieved), strengthening the local poles of expertise and bringing the relevant public institutions, NGOs, academia and international experts in order to reach the expected results, create sustainable, lasting and inclusive dynamics for implementation of reforms, with strong ownership nationally.

The programme support is based on strong and clearly expressed demand from national partners and focuses on achieving sustainable results.

The established methodology aims at bringing the CoE experts' skills and experience directly to the target groups. The CoE and Ukrainian experts work in close co-operation to ensure the needed relevant input in terms of domestic law and practices, including expert presentations and interventions, expert analytical papers/studies and opinions, publications etc.

The programme envisages multiple capacity building activities particularly targeting institutional weaknesses (such as lack of expertise) which can negatively impact the achievement of the expected results.

The following types of activities are foreseen in the programme description:

- **Draft strategies** for bringing domestic legislation and practices in line with European standards;
- **Expert presentations and interventions, expert analytical papers/studies and opinions, expert working groups** in order to bring European best practices and promote the European standards;
- **Legal analysis/recommendations** on current (or draft) legislation in order to address particular weaknesses, lacunas, inconsistencies and areas where further legislation is needed in accordance with relevant European standards;
- **Conferences and seminars** to promote relevant CoE standards and actions in this area, share information on recent legal and political developments as well as on good practice to build capacities, discuss expert opinions on existing and draft legislation accordingly and envisage the next legal steps;
- **Training modules and pilot training activities** for testing the curricula in practice with the support of experienced professionals;
- **Translation, publication and dissemination of materials** to raise awareness on relevant CoE standards and best practices among the general public and specific stakeholder target groups.
- **Steering Committee** to review the quality of the expected deliverables, assess the impact of activities in the targeted areas and provide any guidance or suggestions for improvement.

The authority and political weight of CoE institutions will help in convincing authorities to proceed with the necessary reforms in targeted areas and implement effectively CoE standards. The programme team has a certain degree of flexibility in implementing the programme, e.g. by being able to provide expert advice at short notice or to adapt activities and organise them with alternative partners (civil society, media professionals, etc.). In such cases, the EU Delegation will be notified in due time. The programme will implement the activities as set in the workplan.

4. Inception period preparatory activities

The following activities were carried out during the inception phase of the programme:

4.1. Set-up of the Programme Team

The programme team includes seven positions, including Team Leader - Programme Manager based in Kyiv, Programme Manager based in Strasbourg, Programme Officer and Programme Assistant (Media Freedom and Internet Governance), Programme Officer and Programme Assistant (Data Protection and Access to Information) and Accountant / financial assistant.

The programme Team started in full capacity on 28 August 2014, following the arrival of the Team Leader (on 16 June) and a selection process of two programme officers, two programme assistants and a financial assistant (June-July). The staff members were selected through competitive written and oral examinations.

The Team Leader - Programme Manager based in Kyiv participates in the development of the Programme workplan and implements it, seeking maximum impact and effectiveness. He coordinates the preparation and implementation of activities in close cooperation with the programme manager based in Strasbourg as well as national partners and stakeholders. The Team Leader establishes and develops effective contacts with high-ranking officials, national stakeholders, programme consultants, donors and colleagues in the CoE Headquarters. He ensures and coordinates reporting on programme activities, monitors the implementation of activities, ensures the visibility of the CoE and EU, assigns tasks and supervises the work of the programme staff.

The Programme Manager based in Strasbourg coordinates the steering of the programme with staff members working in the field of media, internet governance and data protection to ensure the quality, effectiveness and impact of its deliverables. The Programme Manager ensures the visibility of the programme in the overall action of the Council of Europe in this field by contributing to the establishment of common working methods, approaches and even synergies in other Council of Europe programmes in Ukraine. The Programme Manager is responsible for ensuring that both programme management regulations of the donor and of the Council of Europe are known and respected, this at the operational and reporting levels. Recruitment is finalised November 2014 with the arrival of a permanent agent. Pending his arrival, a temporary agent coordinated the first activities of the programme following recruitment of the Programme Team in Kiev.

The Programme Officers' task is to plan, organise, implement and follows up on programme activities in their respective areas in accordance with the programme work plan and in close co-operation with the local partners and stakeholders. They coordinate the implementation of the different training activities with local stakeholders and local experts and support the organisation of seminars, workshops, conferences and expert meetings. The Programme officers liaise between the local partners and stakeholders and headquarters regarding the implementation of the programme; report problems encountered; suggest priorities and adjustments as necessary in accordance with the Organisation's procedures, guidelines and priorities, with a concern for quality, efficiency and accuracy.

The Programme Assistants provide logistical and secretarial assistance to the Programme team, as well as experts, assist in the organisation of the programme activities and handle all administrative and financial arrangements in accordance with Council of Europe regulations, procedures and donor requirements. The Assistants prepare the submission of financial supporting documents for final payment, draft and format correspondence, Purchase Orders, Administrative Arrangements, Service Contracts and memos in accordance with instructions;

The Programme Financial Assistant is responsible for daily cash payments and receipts and their recording, carries out all administrative and financial arrangements/transactions of the

programme in accordance with Council of Europe financial regulations, rules and procedures and donor requirements. Also, Financial Assistant prepares records and processes financial transactions, including in particular, input of requisitions and purchase orders into the financial management information system (FIMS) and their finalisation. In addition, Financial Assistant assists in preparing contracts for external service providers and service contracts for consultants and ensures regular follow-up of the programme budget execution and prepares monthly reports for information for the programme management etc.

4.2. Set-up of the Programme Office

The programme team moved into two offices of the new additional premises of the CoE Office in Ukraine located on Illinska 8, building 8, 5th floor.

4.3 Bilateral and multilateral meetings

In order to build a draft work plan and properly coordinate activities the Team Leader met several interlocutors upon his arrival to Kyiv. On 17 June 2014 the Team Leader met the representatives of the EU Delegation to Ukraine, Colombe de Mercier, Sector Manager, Civil Society and Media, as well as David Stulik, Press and Information Officer and Alexandru Albu, Head of Operations Section 1 "Good Governance and Democratisation". On the same day he attended a preparatory meeting with NGOs on media and data protection at the EU Delegation. Following these meetings a regular communication was maintained with the EU Delegation and several coordination meetings took place. A coordination meeting with the Embassy of Canada was held on 19 June. The Team Leader attended two media sector donors' coordination meetings, on 24 July and 11 September (organised by the Embassy of Canada and USAID). The programme will actively contribute to the future coordination of donors' assistance on access to information, in cooperation with the CoE programme financed by the Government of Canada, to be organised through the CoE Office in Ukraine.

The identification of synergies of activities carried out by other organisations (in particular EU Delegation, USAID, Embassies of Canada, US, UK, Denmark, Sweden, Netherlands, Czech Republic, European Endowment for Democracy, OSCE, UNDP, International Renaissance Foundation, Internews, International Media Support, Deutsche Welle Akademie, Solidarity Fund PL) will be ensured in order to avoid duplications and to adopt a common opinion on the reforms in the media / data protection / internet government sectors and thus attain a high level of synergy and mutual support. The Programme Manager regularly participates in the Media Coordination meetings organised by Embassies of Canada and US. The information is exchanged regularly with OSCE Programme Co-ordinator Office in Ukraine. The teams of the Programme and CoE media Programme "Promotion of European Standards in the Ukrainian Media Environment" funded by the Canadian Government share two office rooms and ensure synergy and avoid duplications of activities. Throughout the Inception Period, the programme team met all key partner institutions and organisations/initiatives in order to adjust priorities for the programme and its working plan.

During the inception period with a view of designing a working plan meetings with the following institutions / organisations / initiatives took place : Ombudsman, Verkhovna Rada, State Committee on TV and Radio, National Broadcasting Council, Secretariat of the Cabinet of Ministers, Presidential Administration, Department of Information technologies and electronic governance / Ministry as well as Media Law Institute and Independent Association of Broadcasters, Ukrainian Internet Association, European Media Platform, Ukrainian Association of International Law, International Media Support, National Academy of Judges, Institute of International Relations, Kharkiv Human Rights Group, Ukrainian Association of Press Publishers Reanimation reforms package, Administrator of the UA domain.

On 18 June 2014 the Team Leader attended the parliamentary hearing "Legal support for the development of information society in Ukraine" organised by the Verkhovna Rada Committee on informatisation and information technologies. The hearing provided an opportunity for experts and civil society activists to outline challenges, share good practices and formulate recommendations regarding the State policy in the field, in particular the legal reform, as well as implementation

practice. The Team Leader presented the programme in the Verkhovna Rada Committee on informatisation and information technologies on 22 July 2014, after which the Committee formally endorsed the decision to become a partner of the Programme.

On 10 September the Team Leader participated in the public discussion on the draft Strategy for development of the Information sphere of Ukraine until 2020, organised by the Media Law Institute, in cooperation with Oleksandr Sych, Vice Prime Minister of Ukraine, the State Committee on Television and Radio Broadcasting and the National Association of Journalists. This participation was important in view of elaboration in the framework of the programme of a national strategy for approximation of media and possibly the whole information society legislation with the European standards. In this respect the key partners should include Media Law Institute, the future competent Verkhovna Rada Committee as well as the Government (in particular State Committee for TV and Radio) and the Presidential Administration should be key partners.

5. Work plan priorities

5.1. General background

Marked setbacks were reported with the freedom of expression/freedom of the media in Ukraine in 2013, culminating in a spike in harassment and violence against journalists during the Euromaidan protests. Earlier in 2013 the media and journalists experienced contentious ownership changes, censorship, threats, pressure and a series of cyberattacks. Increasingly frequent violence against journalists went unpunished. IMI registered 496 free speech violations during the year, with the largest number falling under the category of “impeding journalistic activities.” The peak of repressive policies of the former regime came after adoption by the Parliament of the so called anti-protests or dictatorship laws on 16 January 2014. These 10 laws in particular limited activity of the information agencies without state registration, introduced fines for not obeying with the request to limit access to Internet, introduced a criminal punishment for defamation and distribution of extremists materials, the government could decide to prohibit access to Internet, NGOs which received financial assistance from abroad were obliged to pay taxes as “foreign agents”. In overall 206 journalists were reportedly victims of violence during Euro-Maidan protests⁵², including one killed journalist⁵³.

Since former president Viktor Yanukovich was ousted on 22 February 2014, there has been an improvement in the climate for free expression. Progress was registered with a long overdue reform of the public broadcasting – the law on public broadcasting was finally adopted on 17 April 2014. It provided a basis for public broadcasting to be launched. However the launch is being delayed to 2015. The same day, on 17 April, the Parliament voted amendments to more than 50 laws substantially reinforcing the system of access to public information.

The Verkhovna Rada adopted amendments to both the Data Protection Law and to the Law on the Ombudsman, notably to include the notion of consent on the part of the personal data subject, and to extend the powers of the Ombudsman to the private sector. These amendments were adopted by the parliament on 27 March and 13 May 2014.

On the negative side the Law “On reform of State and communal print media” was voted down. The process has to start from scratch in the new Verkhovna Rada. The legal framework for elections has not been improved yet⁵⁴.

Since March 2014 the majority of cases of violations of freedom of expression and freedom of the media were reported in Crimea and the east of Ukraine.⁵⁵ In the past eight months, the de facto authorities in Crimea have limited free expression and intimidated and harassed independent and especially Crimean Tatar Media outlets in Crimea. As a result of increasingly restrictive rules for the media certain media outlets either relocated or closed down.

The CoE PACE Resolution 1466 (2005)⁵⁶ called in particular Ukraine to:

- transform the state broadcasters into public service broadcasting channels in line with relevant CoE standards;
- start privatisation of the printed media founded by public authorities; and
- guarantee the transparency of media ownership.

The EU-Ukraine Association Agenda⁵⁷ includes in particular three priorities in the sphere of freedom of expression: developing a system of public broadcasting (legal framework and its

⁵² Institute of Mass Information, *Euromaidan: list of journalists subject to violence - 206 cases*, 7 March 2014.

⁵³ Viacheslav Veremiy was killed by hired thugs on 18 February 2014.

⁵⁴ Rules should not change shortly before elections (one year before), see Venice Commission, *Code of Good Practice*, Opinion no. 190/2002, Strasbourg, 30 October 2002.

⁵⁵ Institute of Mass Information, *Press Freedom Barometer 2014*.

⁵⁶ PACE, *Honouring of obligations and commitments by Ukraine*, Resolution 1466 (2005), 5 October 2005

implementation, exchange of best practices); securing balanced media coverage of elections and ensuring adequate conditions for journalists work (free of threats and violence).

On 21 March 2014 the EU and Ukraine signed the political provisions of the Association Agreement. Following the completion of technical preparations, the EU and Ukraine signed the remaining provisions of the EU-Ukraine Association Agreement in Brussels on 27 June. The Verkhovna Rada (Parliament) and the European Parliament ratified the Association Agreement on 16 September 2014. Provisional application of important parts of the EU-Ukraine Association Agreement starts on 01 November 2014, including areas of human rights, rule of law, political dialogue and reform, justice, freedom and security, economic and financial cooperation. The Chapter 14 of the Association Agreement concerns information society.

The Ukrainian authorities made declaration concerning their commitment to proceed with legal reforms to be in line with European standards. The most important reforms have been initiated but need to be successfully completed (Public Service Broadcasting running, data protection authority strengthened etc.). The road map for reform in the media sector of the reanimation reforms package (RPR), major civil society initiative, confirms the general priorities agreed for the programme.

The text below exposes the priorities for the programme defined during the inception phase and confirmed at the 1st presentation of the Programme and the 1st Steering Committee on 1 October⁵⁸. They are explained with references to relevant standards, legal and institutional frameworks and practices. The first activities implemented are marked in the tables.

5.2 Freedom of expression and freedom of media

- **Development of a Strategy for approximation of the media and information society legislation with European standards**

The EU-Ukraine Association Agenda and Agreement as well as the Ukraine's commitments before the Council of Europe (see above) require a strategy for reform of media legislation in line with European standards. These standards are based on Article 10 of the European Convention on Human Rights and the relevant case-law of the European Court of Human Rights. They include Committee of Ministers recommendations and declarations on media pluralism and diversity, media in times of crisis, public-service media, freedom of expression and the respect of privacy and human dignity, access to public information, media coverage of elections and new notion of mass media. The Association Agreement aims at "implementing national Information Society strategies (Art.390) and promotes "gradual approximation to the EU law and regulatory framework in the sphere of information society and electronic communication" (Art.394). It also provides for training of journalists and support to the media (Art. 397)⁵⁹.

⁵⁷ EU-Ukraine Association Agenda was adopted in 2009 to replace the EU-Ukraine Action Plan. The present version was endorsed by the EU-Ukraine Cooperation Council on 24 June 2013. It prepares and facilitates the implementation of the Association Agreement before its entry into force.

⁵⁸ The 1st Public Presentation of the Programme offered an opportunity to discuss and agree the major project's priorities in the fields of media, access to information and data protection as well as internet governance. The priorities have been formally endorsed at the 1st Steering Committee meeting.

⁵⁹ "training of journalists and other professionals from both the printed and electronic media, as well as support to the media (public and private), so as to reinforce their independence, professionalism and links with other European media in compliance with European standards, including standards of the Council of Europe"



The programme stakeholders confirmed the need for a strategy both during the Conference-presentation of the programme and the 1st Steering Committee both held on 1 October. It was proposed to start the work on the media Strategy already in 2014. The new Parliament as well as its competent committee, as well as the Media Law Institute (MLI) should be key partners on this issue. MLI acquired valuable expertise at the legal and strategic levels. The programme's focus is on bringing

the expertise based on a comprehensive set of standards guaranteeing the right to freedom of expression and information. Therefore, as originally planned a strategy for approximation of the media legislation with European standards should be elaborated with the support from the programme.

Moreover the programme will support the strategic and legislative reforms in the sphere of information society. It is also planning to award the support aimed at strengthening the professionalism of the media in covering European integration/information society issues.

On 24-26 September the programme supported the international Conference "Agenda for Change" organised in Kyiv by the Independent Association of Broadcasters of Ukraine, Global Forum for Media Development (GFMD) and Free Press Unlimited. The event focused in particular on Ukraine and discussed in Kyiv the current trends and ways forward for the independent media, in particular in the context of the digital switch-over and the shrinking space for freedoms in the post-Soviet region. The two main tracks for the conference were Internet freedoms and digitalization. The Conference contributed to outline the strategic proposals for enlarging the space for independent media and freedom of expression and to setting an agenda for change. As a result of the forum, the participants received a unique opportunity for networking, sharing experience and success stories, learning on digitization, Internet censorship and safety. The Russian propaganda was recognized as a global threat and the need for solidarity and new ideas for countering propaganda were identified. The participants defined the lack of regional exchange, which could foster more cooperation, discussion on Russian language media and gaps filling. A lot of discussions were devoted to dealing with economic difficulties impacting media and saving dying newspapers in this context. Also, the participants pointed out the need for a good connection between the IT/ Internet freedom community and the traditional media.

- **Privatisation of government-owned press**

The CoE PACE Resolution 1466 (2005) advocates for "privatisation of the printed media founded by public authorities". The Law of Ukraine "*On State support to mass media and social protection of journalists*" provides for a privileged position of the State owned media. The privatisation of the print media should be conducted in a transparent way to ensure a true media plurality in line with European standards and best practices.

According to the State Committee on TV and Radio data, there are 518 state-owned regional and local newspapers with the total newspaper circulation of 2,3 mln items⁶⁰. The reform of state-owned press would eliminate unjust competition at the media market and facilitate the development of quality editions/publications at the regional level.

⁶⁰ Oleksandr Bukhtaty, Head of media and communication department of the Presidential Administration of Ukraine, *Communal press in Ukraine*, Presentation during the 1st Programme Presentation, 1 October 2014.

The Law of Ukraine “*On the reform of public state and communal print media*” n°2600 from 21.03.2013 was rejected by the Parliament on 17.04.2014. The draft Law defined an exit of state and/or local authorities from the founders with subsequent conversion, sale or liquidation of the media outlets. The new draft Law has been developed by the State Committee on TV and Radio in coordination with the National Journalists Union (NJU) of Ukraine. The Cabinet of Ministers of Ukraine through the State Committee on TV and Radio plans to request an official expertise of the CoE once the draft is forwarded to the Ministry of Justice.

The draft contains necessary provisions on the final date of the elimination of the state-owned press, detailed mechanism of reform, flexible system of state support. NJU and State Committee of TV and Radio support privileges to the press, including preferential rent of offices for 7 years, priority right for coverage of authorities work.

As initially foreseen the programme will provide an expert opinion on the draft law on the privatisation of the print media. In addition, the programme will focus on developing and delivering a pilot training on modern management and viable business models for the newspaper editorial teams that would undergo privatisation.

- **Media coverage of elections**

The EU-Ukraine Association Agenda requires “*taking early steps to establish clear rules for balanced media access for electoral competitors*”. Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns requires from media owned by public authorities to cover election campaigns “in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.”

The conduct of the media during the election campaign is regulated by the election law, which stipulates that both state and private media should offer balanced coverage and provide contestants with equal conditions. The National Television and Radio Broadcasting Council (NTRBC) supervised the media’s compliance with existing laws during the election campaign. NTRBC’s authority is limited to issuing warnings. Civil society organizations make an important contribution by monitoring national and regional media. There is an important demand for the results of the monitoring conducted by civil society organisations. The results of the civic monitoring are a useful source of information for the representatives of international organisations and monitoring missions (OSCE, ENEMO, NDI, ERI, Canadian monitoring mission etc).

The President of Ukraine announced dissolution of the Parliament on 26 August and fixed the parliamentary election for 26 October. As for the 2014 presidential and 2012 parliamentary elections, the programme supported the civic monitoring of the media coverage for the parliamentary election of 26 October.

The previous similar monitoring was conducted during presidential election in Spring 2014 and was positively evaluated during the assessment of the CoE Ukraine Action plan. The main objective of the monitoring was to inform the public about the conduct of the media during the pre-election campaign and to initiate a discussion about the objectivity and quality of the media reporting. The programme’s findings are not intended to support any candidate or political party, but the integrity of the media environment as a whole during the campaign.

Three service providers submitted their proposals for conducting a civic monitoring. Two service providers were selected for two complementary types of monitoring - *Association Spilnyi Prostir/Equal Access Committee* for a comprehensive monitoring throughout the country,

covering all regions and different types of media⁶¹, and *Telekrytyka* for a monitoring focusing on illustrative cases⁶². In fact the *Association Spilnyi Prostir/Equal Access Committee* has an internationally recognised monitoring methodology (modelled on the methodology of MEMO98, which is reflected in the OSCE/ODIHR guidelines on media monitoring). The NGO was the first in Ukraine to apply the monitoring back in 1994 (relying on a network of trained monitors throughout Ukraine). The similar monitoring was conducted for the previous parliamentary election in 2012 (as well as the Presidential election of May 2014). A CoE expert⁶³ works with the NGO to ensure the best possible quality of the monitoring and its reporting. Three reports on the provisional results of the monitoring were issued and disseminated.

Self-regulatory Recommendations for media coverage of elections will be developed in cooperation with journalist organisations and professional associations under the auspices of the self-regulatory body – Journalist Ethics Commission. Expert advice as regards changes to the election law will be provided. This will contribute to increasing the quality of information in the media during the campaigns and strengthening the transparency of democratic election processes in general.

The programme supported the participation of a lawyer from the Media Law Institute (MLI)⁶⁴ in Lisbon Forum 2014 (15-16 September 2014) which focused on the topic "Electoral processes and democratic consolidation in the countries of the southern Mediterranean". The MLI is a leading Ukrainian NGO on the issue of election law and media coverage of elections. The MLI lawyer contributed in particular to Workshop 4 "Elections and civil society: the role of parties, institutions, NGOs, international co operation" and to a round table on election and media. The experts' community and the CoE Secretariat were well represented at this event allowing a good level of networking and exchanges of experience. The CoE Secretary General, the President and a Member of the Venice Commission, the CoE INGO Conference, GRECO, the experts of IDEA, IFES, Transparency International in particular attended the Forum. The Ukrainian representative noted numerous similarities in the challenges and reforms of the election legislation and practices in the countries in transition. This activity contributed to building capacities and improving networking to exchange in particular on experience of good practices, challenges and ways to address them, in view of the future reform of election legislation.

- **Protection of professional activity of journalists**

The EU-Ukraine Association Agenda requires "cooperating to create the conditions necessary for journalists to work freely and shielded from threats or actual violence". The ECtHR has held that the role played by journalists in a democratic society confers upon them certain increased protections under Article 10 of ECHR. The CoE and other relevant international soft-law instruments set basic principles to protect journalists in conflicts.⁶⁵ They provide for securing the safety of journalism and fighting impunity.

⁶¹ *Association Spilnyi Prostir/Equal Access Committee* applies content analysis and expert assessment methodology. In context of this activity the television (54 national channels and regional channels), radio (4 stations), newspapers (6) and Internet media (51) are monitored in all the regions on objective and balanced coverage of the contestants and their platforms.

⁶² *Telekrytyka* monitors the professional standards at the daily and weekly summary news programs on national TV-channels (one week per month), prepares monthly reviews on respect to journalists' rights and observance of standards of journalism, organises public events and prepare videos/interviews on journalistic standards.

⁶³ Rastislav Kuzel, Consultant, Slovakia

⁶⁴ Igor Rozkladai, Lawyer, Media Law Institute, Ukraine

⁶⁵ CoE CM Recommendation R(96)4 on the protection of journalists in situations of conflict and tension, 3 May 1996; CoE PACE Resolution 1438 (2005) *Freedom of the press and the working conditions of journalists in conflict zones*; UN Resolution *The safety of journalists and the issue of impunity*, 18 December 2013;

Journalists' safety remains the biggest media freedom challenge in Ukraine⁶⁶. A series of violations of journalists' rights and attacks on media outlets were reported in 2014, the majority in the conflict zone in eastern Ukraine. A number of journalists reportedly came under pressure in the annexed Crimea, being in particular intimidated and assaulted by the so called "self-defense" forces⁶⁷.

Art. 171 of Criminal Code criminalises "Obstructing lawful professional activity of journalists", however rare are cases of criminal pursuits under this article, even more rare are cases of convictions. It appears necessary to enlarge the definition of "journalist" to encompass other media actors following the spirit of a recent declaration of the CoE CM.⁶⁸

The Programme activities will complement the CoE support undertaken through the Programme "Integration of European standards in the media environment", funded by Canadian Government and will duly take into account the CoE action in the field.

The programme will focus in particular on the exchange of good practices and awareness raising activities (production and dissemination of issue papers). Moreover it foresees training sessions to promote good practices on securing favourable working conditions for journalists free from threats and actual violence.

The reform of legislation will also be targeted to ensure that the legislative framework, in particular the draft law on the protection of professional activities of journalists, contains adequate legislative safeguards in this area in line with European standards and good practices.

- **Public service media**

The CoE PACE Resolution 1466 (2005) requires the transformation of state broadcasters into public service broadcasting channels in line with relevant Council of Europe standards. The CoE soft law instruments promote public service broadcasting, its independence and special remit.

The Law of Ukraine "On Public Television and Radio Broadcasting of Ukraine" n° 1227-18 adopted on 17 April 2014 was enacted on 15 May 2014. The passing of the law of Ukraine is an important landmark. It provides for there to be two national television channels and at least three national radio stations.

The Law should be further improved, particularly to add clarity and certainty to various provisions on governance. CoE experts recommended the following changes:

- the number of political appointees should not exceed the number of appointees elected through the NGO process;
- the members of the Management Board should be allowed to have direct experience working in Ukrainian TV or Radio;
- the sustainable funding should be secured for the first 4 years and later;
- the legal status for the public broadcasting entity should be definitely agreed.

The new public service broadcasting (PSB) needs to start operating, and with the programme, the CoE technical assistance should continue to strengthen the PSB. The capacity building and training should be among the priorities for the programme. As recommended by the CoE experts, the programme will also focus on raising public awareness on goals, objectives, values and benefits of the public broadcasting in Ukraine. This assistance will complement the efforts to support further the strategy work and the legislation reform undertaken in the framework of the Canada funded CoE Programme.

⁶⁶ Dunja Mijatović, OSCE Representative on Freedom of the Media, 20 August 2014, Vienna

⁶⁷ Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his mission in Kyiv, Moscow and Crimea, from 7 to 12 September 2014

⁶⁸ CoE CM Declaration on the protection of journalism and safety of journalists and other media actors, 30 April 2014

- **Audio-visual regulator**

Independence is a key basic value for an audio visual regulator in a democratic society. This precludes clear rules, criteria and conditions for proposing, appointing and releasing from duty of members, autonomous decision making, rules for preventing conflict of interest, financial autonomy, transparency and accountability.⁶⁹ The National Council for Television and Radio Broadcasting of Ukraine⁷⁰ was designated as the authority for cooperation and mutual assistance in the framework of the European Convention on Transfrontier Television⁷¹. It is also a member of the European Platform of Regulatory Authorities.

Amendments to the Law “*On National Council for Television and Radio Broadcasting*” were adopted in April 2014 providing for dismissal of members of the National Council for the President and the Parliament in the case of non-approval of the Council’s reports.

Having considered the report of the previous National Council for Television and Radio Broadcasting for 2013, the Verkhovna Rada voted no confidence to the Council at the end of February.

The new re-elected National Council started operating as of 7 July 2014. On 21 August the National Council approved the new composition of the civic council, advisory body consisting from representatives of the civil society.

The National Council is responsible for establishing a Supervisory Council by the National public broadcaster. In order to elect civil society representatives it will conduct 9 conferences of nationwide NGOs.

Considering the current priorities of the regulator the programme will support the elaboration of a new strategy (“development plan”) for the national audio-visual sphere, provide analytical, capacity-building and training support based on European standards and best practices. Moreover support is provided to facilitate cooperation within EPRA and the digital switchover.

- **New media and community media**

Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media adopted “**a new, broad notion of media** which encompasses all actors involved in the production and dissemination ... of content...”

The draft Law “On audio-visual services” meant to replace the “*Law on Television and Radio*” and the Law “*On National Council for Television and Radio Broadcasting*” contains a definition of “community media”. However community media practically do not exist in Ukraine. Favourable conditions should be created for the development of community media to satisfy information needs of different regions and minorities⁷². The Council of Europe promotes further development of new media and community media as complementary sources of independent, professional information contributing to public debate. New media and community media should have the sufficient legal basis as well as clear editorial criteria stipulating their roles and responsibilities.

The programme focuses on guidelines and information sessions / seminars for the new media, promoting good European and international practices. The programme is planning to support the

⁶⁹ CoE CM/Rec (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector

⁷⁰ The activity of the body is regulated in particular by the Constitution (Art. 85), Law “On National Council of Ukraine for Television and Radio Broadcasting”, Law “On Television and Radio”.

⁷¹ The Convention and its additional Protocol were ratified and entered into force for Ukraine in 2009.

⁷² International Conference “From State broadcasting to Public Service Media”, organised by CoE Canada funded media project, 1-2 July 2014, Kyiv

Media Innovation Day in 2015.⁷³ Moreover it is planned to raise awareness of broadcasters and officials on principles, objectives and best practices of the community media.

Moreover it will support an event on the topic of new media and gender as well as event on development of the community media in Ukraine.

- **Transparency of media ownership and demonopolisation in the audiovisual field**

The CoE PACE Resolution 1466 (2005) requires to guarantee the transparency of media ownership. CM Recommendation Rec (2007)2 on media pluralism and diversity of media content recalls the importance of transparency of media ownership for both the authorities and the public.

Transparency of media ownership is key for media pluralism, professionalism and de-monopolisation of the media market. The power of the media can be misused, especially in a context of strong media concentration, to the detriment of pluralism and democracy.

As originally planned the programme is planning a conference on media ownership issues in 2015. The event will allow formulating strategic policy recommendations based on the expected progress in the legal reform and the new landscape of actors involved (including new Parliament and new Government).

The programme also focuses on the reform of the audio-visual legislation and on practices to ensure that de-monopolisation in the media sector in light of European standards and good practices.

On 23 September 2014 the programme supported the VIII International Digital Forum “Digital Broadcasting in Ukraine”, organised by the Independent Association of Broadcasters. The CoE expert Mr Marko Ala-Fossi from Finland intervened on the Finland’s perspective on digital TV and lessons for Ukraine. Based on Finish experience, the expert recommended ensuring granting licenses to new companies to run the regional multiplexes, introduce official price ceiling for broadcast delivery services. The digitalization process has become threatening for Ukrainian TV due to excessive tariffs by monopoly operator and unfair distribution of digital licensing. The analogue switch off is planned in 2015. The Forum provided an opportunity to analyse the main problems in the process of digitalisation in Ukraine in the light of European standards and best international practices. It contributed to enhance transparency in the digitalisation process and raising public awareness on the goals, tasks and advantages of digital broadcasting.

Considering the importance of the digital switchover which is scheduled to commence in June 2015 in Ukraine, the Programme will provide support to the national audio-visual regulator and other relevant stakeholders in this important reform.

5.3 Access to Public Information

- **General Analysis**

VLAP refers to the need to achieve a right balance between the freedom of expression and the right to privacy. Following the recommendation contained in the 3rd evaluation report of VLAP access to public information has been improved and a better balance achieved between access to information / freedom of expression and data protection requirements.

⁷³ Media Innovation Day aims at enhancing capacity of Ukrainian media in applying innovations and social media for raising the quality of journalism through bringing case studies of successful European media.

2014 is the fourth year of operation of the Law of Ukraine “*On Access to Public Information*”(hereinafter referred to as ‘the Law’) since its adoption in 2011. Since then the legal framework on access to public information has been substantially reinforced through adoption of amendments to 57 legal acts to align them with the Law on Access to Public Information and the new Law on Information (previously draft law n°0947, when adopted – Law n°1170).

The Law "*On amendments of certain legal acts of Ukraine in relation to adoption of the Law of Ukraine "On information" and of the Law of Ukraine "On access to public information"*" was adopted by Verkhovna Rada on 27 March and signed by the then acting President Turchinov on 17 April, and entered into force on 19 April 2014.

The law specifies that the data concerning the exercise of duties by public officials (State and local self-government), personal data in the declarations of property, revenues and financial obligations in line with the anti-corruption law and the information on receipt by a physical person of public funds cannot be considered as confidential and restricted.

Without amending and aligning the provisions of various information-related laws, a full realization of the right to access to public information often appeared difficult in practice. Therefore, the adoption of this law is an important step to further improvement of the Ukrainian legislation on information and its approximation to the European standards.

In practice, the following positive developments in the area of access to information in Ukraine can be mentioned: special units or responsible officers designated in all public authorities; different templates for submitting access for information requests approved and published; a number of bylaws adopted (although some of them are contradicting the law itself and need to be improved); administrative and court case law has developed; a number of training and explanatory materials have been prepared; and amendments to the Law On the Personal Data Protection abolished a presumption of confidentiality for personal data and stipulates that personal data may be attributed to the confidential information about a person only by law or by that person.

While the above mentioned sets a good background for implementing access to information guarantees it is not sufficient and the reform should continue.

- **Priorities need to be addressed through the programme**

1. During the period after enactment of the Law in May 2011 civil society experts and organisations argued against any amendments to the Law by fear of diluting its provisions and weakening guarantees of access to information during discussions in the parliament. However, now it seems to be a good time to start the reform by drafting targeted amendments and lobbying it through the parliament (under close public scrutiny not to allow any deteriorating standards of protection). Specific amendments have been suggested by the expert community including the following: simplifying the definition of public information; revising provisions on official information; aligning different definitions of confidential information; removing provisions on accessing information about oneself (which duplicate provisions in the Data Protection Law); streamlining provisions on payment for printing and copying documents in response to an information request; including procedure for consultation with the author of the document who restricted access thereto; and broadening the scope of public information holders (administrators); etc. The programme supports drafting of a concept paper on amendments to the legislation on access to public information and drafting of the amendments themselves. In addition, the programme will support consultations and meetings to discuss obstacles encountered in practice and proposed amendments to the legislation on access to public information.

2. Bylaws adopted by various authorities to implement the Law need to be reviewed. Often internal regulations on processing information requests approved by individual public authorities

go beyond what is allowed by law and contradict the Law itself (e.g. by defining what is public information). It could start with the Government resolution on setting the fee limits for copying and printing documents in response to information request, which reportedly provided for too high limits. The Regulations on the official information should be brought in line with the Law no. 1170. Lists of the official information held by the authorities should be revised.

3. Currently there is no independent supervisory body in line with international standards. An independent oversight mechanism should be set up, ideally through constitutional amendments. However, until then a temporary solution could be to designate the Ombudsman institution as such supervisory authority and extend its powers through adopting amendments to the Law (similar to the arrangement made for the data protection mechanism). The issue of setting up an independent oversight mechanism guaranteeing access to public information with the powers of issuing binding decisions and bringing administrative sanction cases in court will be discussed in the framework of the Concept of amendments / amendments to the legislation. Moreover the programme will support the Ombudsman's Office/supervisory authority to be set up through training and exchange of best practices. Capacities to implement the law should be strengthened through regional seminars for public officials.

4. Concept of legislative amendments and the draft law on open data and re-use of public sector information have been prepared and are under public discussion. The draft law provides for establishing a guarantee of free re-use of information obtained through the Law on Access to Public Information, infrastructure of publishing open data (relevant obligation of public authorities, including to publish open data documents on their web-sites and central government open data web-portal, designating an authority responsible for open data publication and standard-setting, etc.), protecting personal data when dealing with publishing of open datasets, etc. The programme will organise a round table in order to discuss improvements of the legal framework on access to public information in the form of open data and re-use information.

5. Access should be improved to the following categories of public information: income and asset declarations of public officials; public registers of immovable property and companies; archives, including archives of former secret services and related to Soviet period repressions; and information about budgetary funds, public procurement, etc. In addition to reforming government practices and institutions, there must be a society-wide awareness raising campaign which could include different activities, including development of a model training courses for universities / general public, public debates in universities, production of awareness materials (incl. leaflet and video).

5.4 Data Protection

- **General Analysis**

The EU-Ukraine Association Agreement provides for cooperation *“in order to ensure an adequate level of protection of personal data in accordance with the highest European and international standards, including the relevant Council of Europe instruments. Cooperation on personal data protection may include, inter alia, the exchange of information and of experts.”*(Art.15).

The 1st phase for the VLAP data protection monitoring focused on legislative and policy framework: adoption of adequate legislation on the protection of personal data; establishment of an independent data protection supervisory authority; ratification of the CoE Convention 108 and its 2001 Protocol⁷⁴. On 27 May 2014 the EC adopted its fourth VLAP progress report concluding

⁷⁴ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS n°108 and Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows n°181

that Ukraine has put in place the necessary legislative, policy and institutional framework and met the first-phase requirements.

The ongoing 2nd phase for the VLAP data protection monitoring requires an effective implementation of the legislation and efficient functioning of the independent data supervisory authority, which needs to be allocated “the necessary financial and human resources”.

The amendments adopted by the Verkhovna Rada on 13 May 2014 to the Law of Ukraine “On protection of personal data”⁷⁵ included the notion of consent of the data subject.⁷⁶ With the adoption of the law ended the first phase of VLAP. It extended the competencies of Ombudsman to the private sector. The Law also regulates the institutional aspect in respect of personal data protection in the Laws “*On the State voters register*”, “*On collection and accounting of the single contribution for the compulsory state social insurance*”, “*On the Unified state demographic register and identity documents*”. The Ombudsman adopted a series of useful internal instructions.⁷⁷

Another positive development is that finally the State Service on Personal Data was abolished by the Resolution of the Cabinet of Ministers of Ukraine “*On Optimization of the System of Central Governmental Authorities*” of 16 September 2014. The body was still working since the Ombudsman started operating as the data protection authority on 1 January 2014.⁷⁸ In this regard, it should be pointed out that *the constitutional status of the Ombudsman’s offers sufficient guarantees of independence in terms of 1) the appointment procedure*, i.e. the Ombudsman is appointed and removed from office by a secret ballot vote of the Verkhovna Rada of Ukraine, 2) *the term of office and conditions for its termination*, i.e. the Ombudsman is appointed for a five-year term.

However, it is of concern that the resources of the abolished Authorised State Body on Data protection have not been transferred to the office of the Ombudsman. The Office currently has only 7 staff members working on data protection as opposed to 35 staff members in the abolished State Service. This is particularly problematic in the context of the recent decrease in the Commissioner’s budget and in light of the rapid development of information technologies.

The CoE expert who had worked previously in the framework of the past CoE assistance to Ukraine on data protection⁷⁹ conducted an assessment mission in Ukraine on 13-15 September and participated in the 1st Presentation of the Programme on 1 October. The expert met twice the Ombudsman’s representative on data protection on priorities for capacity building, the Ombudsman’s representative on access to information, as well as with Ukrainian experts on data protection from the civil society and the EU Delegation representatives and EU experts. The expert called to transfer quickly the financial means of the recently abolished State Service on Data Protection to the relevant DP service of the Ombudsman. She also indicated that the most

⁷⁵ Law of Ukraine “On protection of personal data” n° 2297-VI adopted on 1 June 2010 entered into force on 1 January 2011. It was supplemented and amended by the Law “On Amendments to Some Legislative Acts of Ukraine on Strengthening the Responsibility for the Protection of Personal Data” n°3454-VI of 2 June 2011, Law “On Amendments to the Law of Ukraine On Personal Data Protection”, which entered into force on 20 December 2012.

⁷⁶ Law of Ukraine “On amending certain laws of Ukraine on the functioning of the Ombudsman in the sphere of personal data protection” of 13 May 2014 n° 1262-VII entered into force on 30 May 2014.

⁷⁷ Including the *Standard Procedure for the Processing of Personal Data*, *Rules of Procedure for control over compliance with the personal data protection laws*, *Rules of Procedure for notification of the Ukrainian Parliament Ombudsman of any processing of personal data that poses a risk to the rights and freedoms of data subjects*, *the types of modifications to the information subject to notification*, and *the structural unit or authorized officer in charge of managing the protection of personal data during the processing*.

⁷⁸ Pursuant to Law of Ukraine no. 383-VII, “On Amendments to Certain Laws and Regulations of Ukraine to Enhance the System for the Protection of Personal Data”, adopted by Verkhovna Rada on 3 July 2013.

⁷⁹ Marie Georges, Consultant, France

competent and qualified human resources should also be transferred and that the legal provisions requiring the Ombudsman to give opinion on the relevant DP draft laws and regulations should be effectively applied in practice (in particular regarding by-laws).

The Law on Unified Demographic Register⁸⁰ adopted in 2012 raises numerous concerns. From a practical view the national experts reported that the registry system has been transformed into a huge mechanism of corruption and has become inoperable due to the lack of funds to implement it. In her report the CoE expert who contributed to the expert meeting in the framework of the EU VLAP monitoring mission on biometrics on 15 September 2014⁸¹ criticised the excessively centralised approach foreseen by the Law on Unified Demographic Register (designed to cover 16 different types of personal documents). She indicated that the adoption of the Cabinet of Ministers Resolution of 7 May 2014⁸² is a serious basis for moving forward, but advocated the adoption of the draft Law “On identity documents of Ukraine giving the right to travel abroad”. She underlined that there should be several registers, not one, managed by different public authorities, and matching different registers should be forbidden. The expert recommended establishing an agenda of priorities with regards to modernised documents to be issued, and called to question the relevance of any massive and centralised registration system of persons. Measures should be taken to ensure the freedom of movement and to promote a wider use of different personal documents to prove the identity. Moreover, the expert called to accelerate the proposed introduction of an identity card instead of the internal passport.

The Programme will provide a follow up in order to ensure the respect of data protection standards in the field of biometrics.

In the framework of an international Conference “Agenda for Change” held in Kyiv on 24-26 September on Internet freedoms and digitalization in the post-Soviet region a CoE expert⁸³ made a presentation and animated discussions on the issue of privacy versus mass surveillance of journalists and anonymity versus responsibility. The participants expressed concern about internet surveillance. It was underlined that the majority of the journalists lack the basics related to digital security, making them easy prey to surveillance.

- **Priorities to be addressed through the programme**

1. The result of the experience with the implementation of the provisions of the Law of Ukraine “On protection of personal data” suggests the necessity of its further improvement and bringing in line with international standards for the protection of personal data. This was confirmed by the Recommendations of the parliamentary hearing “Legislative support of development of information society in Ukraine”⁸⁴. The expert community proposes changes on the definition of the terms, on the regulation of relations between the controller of personal data and the processor of personal data, on the qualification of personal data as confidential information; regarding processing special categories of personal data, such as sensitive data; on the notification to the Ombudsman; on the grounds of processing of the personal data; regarding the collection and storage of personal data; disclosure of personal data and granting access to personal data; on destruction of personal data; on the Commissioner’s powers as for the protection of personal

⁸⁰ The Law “On Unified State Demographic Registry and Documents that Confirm Citizenship of Ukraine or Individual’s Special Status” envisages the creation of a database containing personal data used for the issue of biometric travel passports, domestic passports, and driving licenses.

⁸¹ Marie Georges, Consultant, France

⁸² Resolution of the Cabinet of Ministers of Ukraine of 7 May 2014 n° 152 “On approval of a sample of the blank, technical description and Procedures for processing, issuance, renewal, transmittal, seizure, return to the state, destruction of passport of a citizen of Ukraine for travelling abroad with a contactless chip, its temporary retention and seizure” entered into force on 11 June 2014.

⁸³ Nataša Pirc Musar, Consultant, Slovenia

⁸⁴ Verkhovna Rada, Resolution n°1565-VII, 3 July 2014,

data; and on the cross-border transfer of personal data. The programme will support drafting of legislative amendments to relevant laws and by-laws in close cooperation with the Ombudsman, the Parliament, other relevant institutions, expert community and the public.

2. The Data Protection Authority – Ombudsman, seems to enjoy sufficient guarantees of independence, however its capacities, human and financial, are far below the expected level, considering the rapid development of information technologies and the fact the abolished Authorised State Body on Data protection used to have 35 (at best even more than 50) staff members. Therefore the allocation of the necessary financial and human resources is a major political and strategic priority, which is a paramount condition for an effective enforcement and a benchmark for the 2nd phase of VLAP. Moreover the programme strengthens capacities of the Ombudsman’s Office through expert support and coaching, exchange of experiences, training and finalisation of a training manual.

3. There is a lack of understanding and awareness of the data protection law and its implementation both among public officials and the general public. Generally in Ukraine there is also a lack of expert resources in the private sector and civil society. It is important to mention that the environment in Ukraine for implementing reforms and implementing data protection safeguards and mechanisms in all relevant sectors is favourable at the moment and the space for open discussion is sufficient. The programme will contribute to increase the exposure of the state authorities and general public to educational and awareness raising activities on data protection.

4. The Recommendations on the protection of privacy in media coverage were developed in 2012 by a team of international experts commissioned by the Council of Europe, national experts of the Media law institute and national stakeholders such as journalists, bloggers, mass media associations, other NGOs and the Journalists’ Ethics Committee. The Programme will organise a seminar to take stock of the implementation of recommendations and trainings sessions to support their implementation and dissemination. Relevant international good practices and standards relating to coverage of private life in the media and protection of the right to privacy will also be in the focus.

5.5 Internet Governance

- **General Analysis**

The Council of Europe is promoting an Internet based on its core values and objectives, namely human rights, pluralist democracy and the rule of law. The CoE Internet Governance Strategy 2012-2015 adopted in March 2012 by Ukraine and other 46 member states aims at maximising rights and minimising restrictions. Pursuant to the Strategy the CoE *Guide to human rights for Internet users* was adopted in April 2014⁸⁵. The Guide is a comprehensive compendium of existing human rights standards and enforcement mechanisms for Internet users. Other relevant CoE soft law instruments concern in particular freedom of expression online, new notion of media, openness, integrity and universality of the internet, net neutrality, social networks, ISPs, online games providers, blocking and filtering, the public service value of the Internet, Internet Governance Principles. The CoE relevant binding instruments include Convention 108 on data protection (in force in Ukraine since 2011, see page 20), Convention on Cybercrime (in force in Ukraine since 2006) and its additional protocol ‘Medicrime’ Convention⁸⁶ (ratified by Ukraine in 2012) and Lanzarote Convention⁸⁷ (in force in Ukraine since 2012). The commonality of goals pursued by the CoE and the EU on public policy issues related to Internet governance is reflected

⁸⁵ CM/Rec(2014)6 on a Guide to human rights for Internet users, 16 April 2014.

⁸⁶ Convention on the counterfeiting of medical products and similar crimes involving threats to public health, CETS n°211.

⁸⁷ Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS n°201.

in shared vision and objectives between many CoE instruments and EU Digital Agenda for Europe.⁸⁸

In Ukraine in particular the following legal documents are relevant for IG: Law of Ukraine “On basic principles of the Information Society development in Ukraine for 2007-2015”, the National Strategy for Information Society Development in Ukraine, the National Program of Informatisation and the Law “On Access to public information”.

The dictatorship or anti-protests laws adopted under the former regime provided for Internet censorship and unjustified restrictions, which provoked a large opposition in the society (see page 11). The Draft Strategy on Information Sphere Development has been recently developed by the State Committee on Television and Radio Broadcasting under the request of the National Security and Defense Council. On 10 September 2014 the Media Law Institute in cooperation with State Committee on Television and Radio conducted a public discussion on the Draft Strategy. The clear added value of the text is regulation of the issue of the national information security. Many experts recommended merging the strategic documents.

The Civic council for ICT – platform of NGOs created in 2005 and regrouping major NGOs in the field of information society and media – made a particularly valuable contribution in the past in the formulation of the strategic documents. The council regularly issued policy reports containing specific recommendations and is going to present proposals for a strategy for approximation of the information society legislation with European standards.

On 18 June the Verkhovna Rada conducted a parliamentary hearing on the issue of legal support for the development of information society in Ukraine. The event was attended by MPs, government and local self-government officials, civil society and the private sector (incl. IT industry) representatives, Ukrainian and international experts. The hearing provided an opportunity for experts and civil society activists to outline challenges, share good practices and formulate recommendations regarding the State policy in the field, in particular the legal reform, as well as implementation practice. It appeared clear that the national policy in the field is not coordinated and institutionally dispersed (one of the main recommendations concerned the creation of a central government body for formulation and implementation of the national policy) and the legal framework needs to be improved/updated. The Verkhovna Rada adopted a resolution on 3 July endorsing the recommendations. They include recommendations for developing a State policy, creation of a central body of executive power for the formulation and implementation of the State policy on information society, improving the national system of indicators for the development of information society, promoting further development of the self-regulation, creating a database with training materials, reviewing existing training curricula.

Taking into account the new context in Ukraine, particularly in light of EU-Ukraine Association Agreement⁸⁹, and the existing strategic documents in Ukraine⁹⁰ there appears to be a need for a strategy for approximation of the national legislation in the field of information society with European standards. It is both strategically important and relevant to provide assistance in elaboration of a strategy for the approximation of the national legislation in the field of information society with European standards. It is recommended to expand the SO 1 to incorporate this element.

- **Raising awareness and promoting the human rights on line**

⁸⁸ This concern in particular tackling child exploitation and child pornography, digital literacy and inclusion, personal data, privacy and cybercrime.

⁸⁹ The Agreement provides for a “gradual approximation to the EU law and regulatory framework in the sphere of information society” (Art. 394) and to “implementing national Information Society strategies...” (Art 390).

⁹⁰ The Law on “On basic principles of the Information Society development in Ukraine for 2007-2015” provides for “approximation with international standards”; the Government Strategy for development of information society in Ukraine provide for approximation with European standards and the draft Strategy for development of information sphere of Ukraine until 2020 provides for approximation with EU standards.

The Council of Europe Guide to human rights of Internet users consolidates the relevant CoE standards and the case-law of the ECtHR, defining an enabling environment on-line. The document provides guidance to Internet users on their rights and the ways to apply them as well as to public authorities on their obligations to protect, respect and promote human rights. It is expected to encourage national debates on the protection and promotion of human rights of Internet users and their empowerment and to strengthen corporate social responsibility of the private sector. The programme will support the practical application of the CoE Guide for Human Rights for Internet users. A study on implementation of the Guide and on mapping judicial and extrajudicial remedies and redress mechanisms for protecting human rights online will be conducted. The programme supports translation and publication of materials on the CoE standards. The Guide has already been translated (its explanatory memorandum is being translated).

A compendium of relevant CoE standards and ECHR case-law is being prepared and the relevant documents are being translated into Ukrainian language and disseminated.

The programme supports also the conduct of a series of public debates to promote the Guide and raise awareness on human rights of Internet users.

The first of such events took place in Kyiv on 24-26 September in the framework of an international Conference "Agenda for Change". The Conference focused on Internet freedoms and digitalization in the post-Soviet region. A CoE expert⁹¹ presented and animated discussions on the CoE Guide to Human Rights for Internet Users. The expert presented the history of preparation of the document, its main provisions, particularly regarding specific rights and effective remedies, and focused on the ways to implement the Guide. Another CoE expert⁹² presented pros and cons of the current debate on the recognition of a right to Internet, the related international standards and best practices as well as the emerging practice of constitutional regulation for access to Internet. The expert recommended including into the Constitution specific provisions on positive State obligations to protect the Internet access. The discussion focused on the need to ensure the implementation of the Guide in practice, a proposal was made to launch an international treaty securing Internet freedoms.

A special focus will be on children and youngsters. A special course for children will be elaborated and pedagogical and ludic materials will be promoted. The Safer Internet Day will provide an opportunity to raise awareness on human rights on line and the CoE Guide.

As initially foreseen a training course for judges and a training course for public officials will be elaborated with the support of the programme. A pilot training session will be organised for trainers and several pilot sessions supported in the regions.

The programme will support the development and adoption of a frame to guide the Internet Service Providers, social networks and search engines on the issue of human rights of Internet users. Relevant materials will be translated and disseminated.

Moreover the programme will support the elaboration of e-learning courses and development of a website containing materials on the Guide and other relevant materials on human rights on line.

- **Strengthening open, inclusive and transparent multi-stakeholder IG dialogue**

The CoE IG Strategy 2012-2015 underlines the need of a multi-stakeholder dialogue and support. The CoE IG principles promote an inclusive approach - the full participation of governments, the private sector, civil society, the technical community and users on IG matters. The Ukrainian IG

⁹¹ Tanel Tang, Deputy to the Permanent Representative of Estonia to the CoE

⁹² Dmytro Kotlyar, Consultant, Ukraine

Forum is a platform created in 2010 with the support of EuroDIG. The Ukrainian IGF met annually since 2010. The principles or the so called “Protocol of intention” regulate the conduct of the Ukrainian IGF. The Programme works on consolidation of the Ukrainian IGF, through the support of the fora in 2014 and 2015 and the mechanism of permanent consultations. In particular expert support will be provided and best practices shared. The project will promote an enhanced awareness and dialogue of the participants in the Ukrainian Internet Governance Forum on Internet governance principles and human rights standards of the Council of Europe. Moreover the programme will support participation of the key stakeholders in the international IG and human rights debates, in particular the Global Internet Governance Forum and the European Dialogue on Internet Governance (EuroDIG).

The programme supported the participation of 11 Ukrainian representatives in the Global IGF in Istanbul on 1-5 September 2014. Through their participation in the Forum the Ukrainian participants, representing the relevant State institutions, the civil society and the academia, had a chance to improve their awareness and knowledge on IG principles and the main IG challenges as well as on the relevant CoE standards (in particular the Guide on human rights of Internet users). The Ukrainian representatives participated in debates and sharing good practices on human rights, personal data, freedom of speech and assembly, economic and social rights in terms of internet governance. The study visit contributed to strengthening the multi-stakeholder Internet governance dialogue nationally, in particular in view of the IGF UA (3 October), and to improved coordination and input in the framework of the future programme's activities. In the margin of the event the Ukrainian representatives participated in two thematic meetings, exchanging ideas with the relevant representatives of the CoE Secretariat from Strasbourg.

16 participants representing government agencies, civil society, ISPs and academia followed the Forum through a distant hub organised by the Parliamentary Committee on Informatisation and Informational Technologies with the support of the programme. The participants inter alia discussed the challenges of financing the development of the internet, the issues of human rights and the internet, access to information. The participants recommended providing for the right to Internet as the fundamental one in the digital age allowing the enjoyment of other rights.

6. Quick response mechanism

The funds of the “quick response mechanism” are foreseen to allow the team to address additional stringent needs that were not included from the initial planning. The mechanism encompasses a series of grants for provision of assistance, complementary to the working plan and directly related to the objectives of the Programme.

the provision of assistance on short notice in cases unforeseen in the work plan, or any other activity that is directly related to the objectives of the programme.

The quick response mechanism will be used to provide support, primarily to media and NGOs on urgent issues, including possibly the following: enhancing security of journalists, developing a system of public broadcasting, digitalisation, media monitoring of local elections, raising professionalism of the media on European standards and best practices, raising transparency and introduction of anti-corruption mechanisms in the operation of the national audio-visual regulator, new media and community media, access to information, data protection and internet governance. The funds could also be used for activities in the regions.

Calls for proposals will be launched. The representatives of the CoE Secretariat in Strasbourg, as well as of the EU Delegation in Kyiv will be dully involved at the stage of agreeing the terms of reference and evaluating the winners.