



Post-election Media Round Table

“Media Monitoring of Elections 2014:

Draft recommendations

Media independence & diversity

- Media reporting should be balanced and factual, including coverage of the activities of the authorities. Media should be able to criticize activities or inaction by the authorities and other official bodies whose activities are financed from the public money, to investigate corruption and other wrongdoings and they should not face any pressure in the form of retaliation.
- The freedom and independence of the media should be respected, as objective reporting is essential during an election campaign. Public authorities should always refrain from interfering in activities of the media and other media personnel with a view to influencing the elections.¹
- The role of money in media reporting on elections indicates that there is a need for more monitoring of the media and more effective enforcement of provisions of the election law. In this context, the very complex problem rests in the endemic malpractice of advertising material that is not appropriately labeled as such and presented as regular editorial coverage. This practice is obviously against professional standards and journalistic ethics: hidden advertising in a media outlet represents a clear breach of basic journalistic values. Therefore, it would be advisable to amend the existing articles on hidden advertising. Targeted provisions against hidden advertising may be included in election or media laws, specifying which cases are considered potentially hidden ads and how such cases will be examined. Additionally sanctions against corruption – as set forth in the relevant criminal or corruption laws - may be foreseen in relation to media bribery.
- Any paid political advertisement appearing in print media or broadcast shall be clearly identified or marked as a paid advertisement. Media should identify in a patent manner paid space or party sponsored slots in order to allow voters to be aware of the propagandistic nature of the programme. Such a position is clearly expressed by the

¹ See the Council of Europe’s Recommendation CM/Rec (2007) 15 on measures concerning media coverage of election campaign (Non-interference by public authorities) at: <https://wcd.coe.int/ViewDoc.jsp?id=1207243>

Council of Europe: “A *paid political advertisement should be clearly recognizable as such by the public.*²

Transparency

- While the law on the transparency of media ownership was adopted in July 2013, in response to a request of the Parliamentary Assembly of the Council of Europe, it still allows the true owners to remain hidden. As such, consideration could be given to amending existing provisions regulating transparency of media ownership, with a view to ensuring public access to detailed information regarding the involvement of individuals and of legal entities in the ownership structures of the media and on the nature and extent of their respective involvement. Transparency of media ownership is not only important for the authorities in charge of implementing regulations concerning media pluralism so they can take informed decisions, but also for the public to make its own analysis of the information, ideas and opinions expressed by the media.³
- The enduring monopolization of the media market by several powerful groups has limited the Ukrainian audiences of an effective variety of sources of information, and has thereby weakened the guarantees of pluralism. Such undue concentration of media ownership should be prevented through appropriate measures. Consideration could be given to further review the legislation to prevent any direct or indirect cross-ownership in the broadcast media. No single owner may own shares in other companies, including through a third party.
- Where media are owned by political parties or politicians, consideration should be given to ensure that this is made transparent to the public.⁴

Media regulator

- Authorities should ensure (both in legislation and in practice) the political and operational independence of the National Council on Television and Radio Broadcasting (NCTR), in line with the Council of Europe’s recommendations.⁵
- If the NTRC is to be respected as independent and credible media regulator, a consideration should be given to improving the current system of appointing their members. It would be advisable that NTRC’s membership is diverse, including experts with media background and experience, selected *inter alia* from among civil society organizations dealing with the freedom of expression.

² Council of Europe, Recommendation No. R (99) 15, at http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281999%29015&expmem_EN.asp

³ See, *inter alia*, the Council of Europe Recommendation CM (2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content <https://wcd.coe.int/ViewDoc.jsp?id=1089699>.

⁴ Council of Europe’s Recommendation CM/Rec (2007) 15 on measures concerning media coverage of election campaign (Transparency of, and access to, the media).

⁵ See the Council of Europe’s recommendation on the independence and functions of regulatory authorities for broadcasting sector at http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023&expmem_EN.asp.

- Consideration could be given to empowering the NTRC to be by law to oversee and ensure compliance with the requirements of the election law as regards the participation of the media and news agencies in providing information and conducting election campaigning. At the moment, it is not clear whether this oversight must be exercised jointly, requiring the agreement of various institutions (listed in the election law), or any of these institutions may take enforcement action on its own initiative.
- The procedures for dealing with complaints should be timely, clear and accessible in order to increase the level of confidence and provide complainants with prompt remedy. Sanctions should be clearly defined and commensurate with the gravity of the violation committed. At the same time, editorial independence of the media should be respected – there should be an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.⁶
- The NTRC should monitor *ex officio* broadcasters' compliance with legislation and contractual license conditions and in case of their non-compliance it should apply appropriate sanctions.
- Consideration could be given to strengthening the NTRC's media monitoring department, both in terms of allocation of funds and of ad hoc training in quantitative and qualitative media monitoring analysis. This would enable the NTRC to better assess whether broadcasters comply with their legal obligations during a campaign.

Digital switchover

- NTRC should be empowered to conduct the process of switchover to digital broadcasting in a transparent and publicly accessible manner and to inform and ensure participation of the public. Provisions should be added that relate to the forthcoming digitalization of the media in order to safeguard audience of the prominent national and regional media within the certain transitional period during a switchover to digital broadcast.

Education & Legal awareness & General

- Consideration could be given to creating platforms for discussion, trainings, studies and self-reflection on the media, including in the regions, to enhance the current level of journalistic profession. This would help journalists, managers and students to increase their professional capacity and would also improve the current level of media literacy. Access to various educational resources, such as books, databases, methodology, research magazines, as well as a chance to exchange experience through international media networks and journalistic associations would also help in achieving these efforts. It is also important to strengthen legal awareness of journalists, including use of legal protection mechanisms.
- Media monitoring should become strong and ongoing process, both in quantitative and qualitative mode, to provide a feedback to the sector, and to foster media professional and

⁶ See the Council of Europe's Recommendation CM/Rec (2007) 15 on measures concerning media coverage of election campaign (Editorial independence) at: <https://wcd.coe.int/ViewDoc.jsp?id=1207243>

ethical standards. Media should continue and strengthen their mechanisms of self-regulation, including adopting internal Code of Ethics.

- Despite the amendments of election law (Article 66), the legal framework for the media still does not include explicit obligation for fair, balanced and impartial coverage in news and current affairs programs on all electronic media, in line with international good practices. It could be taken into consideration to introduce clear guidance regarding what constitutes equitable coverage of candidates/political parties in news programs, in order to protect journalists from external pressure.
- It would be advisable to introduce/strengthen legislation with a greater procedural detail aimed to protect journalists' sources and whistleblowers.
- Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.⁷

⁷ Council of Europe's Recommendation CM/Rec (2007) 15 on measures concerning media coverage of election campaign (Opinion polls).