

European standards and Ukraine's commitments to the European Union and the Council of Europe in regard to media reforms

Obligations and commitments of Ukraine to the European Union and the Council of Europe in the context of the law on audiovisual media services

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Audiovisual media policies under the UA-EU Association Agreement

1. Association Agreement fully signed on 27 June 2014
2. Ratification by UA and consent given by European Parliament on 16 September 2014
3. Ratification by all individual EU Member States required
4. Entry into force on the first day of the second month after deposit of ratification of ratification instrument and all individual EU Member States
5. Agreement on provisional application of certain provisions of the Association Agreement on 1 November 2014, and the free trade part on 1 January 2016
6. Provisional application does neither apply to the Audiovisual Media Services Directive nor to the regulatory framework for electronic communications
7. Provisional application does apply to participation in EU agencies and programmes (such as 'Creative Europe'), but is subject to the rules of the framework agreement on the general principles for the participation of UA in union programmes (Protocol III, Art. 5)

Audiovisual media policies under the UA-EU Association Agreement

‘Creative Europe’ programme

1. Agreement signed on 19 November 2015 between UA and EU; entry into force: 1 January 2016 (retroactively, once UA has notified the European Commission that it has fulfilled the domestic legal requirements allowing the agreement to enter into force)
2. Until full transposition of the Audiovisual Media Services Directive, cooperation in the MEDIA Sub-programme limited to certain actions:
 1. Training of audiovisual professionals
 2. Facilitating access to trade events and markets
 3. Support for presenting and promoting UA audiovisual works at festivals and other promotional events
 4. Audience development

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‘Creative Europe’ programme

3. After transposition of the Audiovisual Media Services Directive, support for:
 1. The development of film and television works, video games and multimedia
 2. Independent production companies to facilitate international co-production
 3. Facilitating meetings between international co-production partners and/or providing indirect support for audiovisual works co-produced by international co-production funds
 4. Distribution and circulation
 5. Access to the European cinema operators’ network for screening purposes
 6. Innovative actions testing new (digital) business models and tools

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Characteristics of an EU Directive:

1. Binding legal instrument
2. Harmonization of national laws of Member States
3. Transposition required
4. Member States are free to choose their own methods, but the result envisaged by the European legislator is binding
5. European Commission and EU Court of Justice ensure compliance

Audiovisual media policies under the UA-EU Association Agreement

Audiovisual Media Services Directive

1. Freedom of movement of services across Member States borders is a fundamental right under EU law.
2. Audiovisual media programmes are considered to be services.
3. Member States must ensure freedom of reception and are not allowed to restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by the Directive
4. Only one Member State can have jurisdiction over an audiovisual media service provider.
5. Technology neutral and platform independent regulation

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Audiovisual Media Services Directive

6. Distinction between linear and non-linear audiovisual media services:
On-demand audiovisual media services are different from television broadcasting with regard to the choice and control the user can exercise, and with regard to the impact they have on society. This justifies imposing lighter regulation of on-demand audiovisual media services.
6. Promotion of European content and independent productions (quota obligations)
7. Mutual assistance:
 1. Contact Committee
 2. European Regulatory Group for Audiovisual media services (ERGA)

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Audiovisual Media Services Directive

8. ERGA: Advisory panel of the European Commission; duplicates EPRA to a certain extent
9. Report on the independence of regulatory authorities duplicates the previous work of INDIREG
10. Revision: Commission proposal expected in June 2016

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EU Regulatory framework for electronic communications

1. Part of the Association Agreement
2. Rules on the independence of regulatory authorities
3. No individual licensing of content distributors ('programme providers') who do not use the scarce radio spectrum
4. Access obligations
5. Rules relating to 'must carry' obligations

Honouring of obligations and commitments made by Ukraine to the Council of Europe

On 5 October 2005, the Parliamentary Assembly of the Council of Europe adopted a resolution (Res. 1466 (2005)) in which it called upon Ukraine to

1. transform the state broadcasters into public service broadcasting channels in line with relevant Council of Europe standards;
2. start privatisation of the printed media founded by public authorities;
3. guarantee the transparency of media ownership;
4. create equal conditions for the functioning of all media by revising the 1997 Law on Governmental Support for the Media and Social Protection of Journalists;
5. ratify the European Convention on Transfrontier Television (ETS N°. 132);
6. ensure that the new version of the Law on Television and Radio Broadcasting is in line with Council of Europe standards and with the recommendations of its experts.

Honouring of obligations and commitments made by Ukraine to the Council of Europe

- Since 2005, several Council of Europe experts have made recommendations as to how Ukraine could bring its Law on Television and Radio Broadcasting in line with Council of Europe standards
- In 2011, Eve Salomon and Bernd Möwes analysed and commented upon the draft Law “On television and radio broadcasting” upon the request of the Ukrainian Parliament
- They recommended to the Parliament to adopt a “comprehensive and modern law where all the issues are dealt with in a coherent way” (for example, licensing, power and competences of the regulatory authority, public service broadcasting, digital switchover, etc.)
- They also recommended they criticized the lack of penal provisions adjusted to the specific circumstances of broadcasting, which renders the National Television and Radio Broadcasting Council powerless.