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prepared on the basis of the expertise by Council of Europe experts:

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ON

The Law of Georgia on Broadcasting

The Council of Europe is implementing the project “Strengthening Media Freedom, Internet Governance and Personal Data Protection in Georgia” in the framework of the Council of Europe Action Plan for Georgia 2020-2023, aiming to address and support the need for legislative reforms and capacity-building in the audiovisual field, Internet, personal data protection and access to information in Georgia.

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1. ABBREVIATIONS AND TERMS USED IN THIS OPINION

AVMSD	Audiovisual Media Services Directive 2018/1808
Broadcasting Law	The Broadcasting Law of Georgia as amended in 2022
Charter	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
Code of Conduct	Georgian Code of Conduct for Broadcasters
ComCom	Communications Commission of Georgia
Draft Law	On Making Amendments to the Law of Georgia on Broadcasting
DSA	EU Digital Services Act
eCD	EU e-Commerce Directive
ECHR	Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms
ECTT	European Convention on Transfrontier Television
EU	European Union
GDPR	EU General Data Protection Regulation
ICCPR	International Covenant on Civil and Political Rights
OSCE	Organisation for Security and Cooperation in Europe
The Project	Strengthening Media Freedom, Internet Governance and Personal Data Protection in Georgia
UDHR	Universal Declaration of Human Rights

2. INTRODUCTION

The Council of Europe is currently implementing the Project “Strengthening Media Freedom, Internet Governance and Personal Data Protection in Georgia” (the Project) aimed to support Georgia in addressing current needs in the field of media. The project is implemented in the framework of the Council of Europe Action Plan for Georgia 2020-2023.

On 3 November 2022, the Council of Europe was asked by the Parliament of Georgia, to provide an independent expert opinion of the draft amendments to the Law of Georgia on Broadcasting, concerning its correspondence to the EU 2018/1808 Audiovisual Media Services Directive and European standards.

Georgia’s 2004 Broadcasting Law (as amended on December 22, 2022) sets out the main official systems for professional media regulation and self-regulation in the country. In terms of substance, these consist mainly of various standards set out directly in the Broadcasting Law, alongside far more detailed standards and rules set out in a Code of Conduct for Broadcasters adopted by the Communications Commission (ComCom) in 2009. Procedurally, the Code as well as the articles related to veracity and impartiality in the Law are applied directly by individual broadcasters through complaints made to and decided by them. This can be considered a type of self-regulation.¹

In 2014, Georgia signed an Association Agreement with the European Union (EU) which provides, among other things, for Georgia to align its legislation with the EU Audiovisual Media Services Directive (AVMSD). Georgia has also been a member of the Council of Europe since 1999 and, as such, is bound by the European Convention on Human Rights, including its guarantees of freedom of expression at Article 10. It is also a participating state in the Organisation for Security and Cooperation in Europe (OSCE) and has made commitments in that context.

Having been accepted for the preliminary track for membership of the EU in June 2022, Georgia is now expected to make significant steps to align its audiovisual media services legislation.

Accordingly, a draft law, on Making Amendments to the Law of Georgia on Broadcasting (Draft Law) was submitted to the Parliament as a legal initiative on 7 September 2022. The Draft Law was not subject to discussion or consultation with stakeholders prior to its adoption at First Reading on 20 September 2022. At its first reading session, the Parliament announced its plan to hold consultations with all interested stakeholders relating to specific provisions of the Draft Law prior to the second reading. However, only one meeting took place with the industry and civil society representatives prior to adoption of the Law on Broadcasting through second and third readings, which took place in December 2022.

In its request for an expert review and legal opinion of the Draft Law, addressed to the Council of Europe in early November 2022, the Parliamentary Committee highlights the following: “It is important for us to consider two factors in the process of adopting the Draft law:

1. Inclusiveness of the discussion process to enable involvement of all actors.

¹ According the EU’s definitions (see the “Better Regulation Toolkit”: https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf) it is not quite self-regulation as the Code was developed by the regulator, rather than the industry itself and the enforcement is by mechanisms set by individual media companies rather than collective bodies established by the industry. However, definitions vary and the key element in the Georgian case is that enforcement is largely done within the industry.

2. Maximum compliance with EU directives in terms of legal requirements based on the best EU practices and European standards.”

As a full analysis of the Draft Law would require some time to complete in the interim, the Parliament requested (through the same communication), the Council of Europe to provide an expedited analysis of three outstanding and urgent issues² which have caused controversy with stakeholders. To meet with the expedited timetable proposed by Parliament, the Council of Europe provided an initial analysis of three key outstanding issues at the end of November with the rest of the expertise to be delivered at a later stage. The expert conclusions and recommendations on those three issues remain the same as indicated in the initial analysis submitted to the Parliament. Hence, they were transposed into this final and full analysis without significant change.

Prior to the publication of this final analysis, the Parliament has already adopted the amendments to the Law on Broadcasting without considering recommendations of the initial analysis but has committed to revise the Law after its adoption in line with this final analysis.

This final, full analysis considers all the provisions changed with the amendments adopted in December 2022. It was not possible to consider only the amendments on their own and come to a view as to whether the Broadcasting Law is compliant with best EU practices and European standards. Therefore, what follows is an analysis of the entire Broadcasting Law³, as amended.

This expert opinion takes into account the following (non-exhaustive) list of relevant international law and standards:

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- Charter of Fundamental Rights of the European Union (Charter)
- European Convention on Transfrontier Television (ECTT)
- EU Audiovisual Media Services Directive (AVMSD)
- EU Digital Services Act (DSA)
- EU e-Commerce Directive (eCD)
- EU General Data Protection Regulation (GDPR)

This opinion has been written taking account of the relevant provisions of the following additional Laws of Georgia:

- General Administrative Code
- Advertising Law
- Criminal Code
- Code of Conduct for Broadcasters⁴
- Rules of Procedure of the Parliament of Georgia.

² 1. Prohibition of advertisements and programmes containing hate speech and incitement to terrorism, as contained in Article 55(2) of the Draft Law; 2. Right of reply, as contained in Article 52(1); and 3. Right of appeal.

³ With the exception of Chapter III on Public Broadcasting and Chapter V on Community Broadcasting, as these topics are not covered by AVMSD and, hence outside the scope of this analysis

⁴ Approved by Georgian National Communications Commission Resolution No 2, March 12, 2009

3. EXECUTIVE SUMMARY

There are a number of areas of the Broadcasting Law which do not align with EU and Council of Europe standards. Overall, the Broadcasting Law does not align with AVMSD. Furthermore, there are a number of provisions which would be likely in breach of Article 10 (freedom of expression) of the ECHR. As such the provisions in the current Broadcasting Law would need to be changed with the aim of addressing those clauses that are yet not aligned with European standards.

Some of the key concerns are set out in this summary, although the entire Opinion must be considered to identify all the concerns.

2.1. General Provisions – Chapter I

The Broadcasting Law now contains a number of additional definitions that help to transpose the AVMSD and update the law, however, there remains a lack of clarity in the definitions of services and some important distinctions have been missed. It is important that the definition of “media service” refers to such services as having editorial responsibility, and that the definition of “video-sharing platforms” indicates they do not have editorial responsibility, but instead engage in the “organisation” of programmes and/or user-generated content. In defining “editorial responsibility”, the law also should clearly state that it does not necessarily imply liability.

The definition of “audiovisual commercial communication” is overly broad and missing the important element that commercial communication relates to the pursuit of economic activity, so this should be added. A definition of “advertisement” has been added to the Law that clearly includes communication that is not for commercial purposes or not related to the pursuit of an economic activity, such as pre-election or social. The distinction between these should be made clearer.

The definition of “codes of conduct” should not restrict these to only being developed by the Communications Commission.

2.2. Regulation of Activities in the Field of Broadcasting – Chapter II

The National Regulatory Authority, the Communications Commission (ComCom) cannot be said to be independent according to the criteria laid down by AVMSD and the Council of Europe’s standards on the independence of regulatory authorities, which require the independence of the National Regulatory Body to be ensured. This requirement applies regardless of whether the governing party holds a significant majority of seats in Parliament. There are a number of shortcomings in the law to support this conclusion, including the fact that a list of candidates to be members of ComCom are put together by the government through a non-transparent procedure, and Parliament then selects candidates by majority vote. Whenever the ruling party has a majority, as is currently the case, this means all members are effectively submitted and selected by the governing party, contrary to CoE standards. Furthermore, members may only be removed from office with a three-fifths vote by Parliament, even if they have a conflict of interest or are not attending meetings as required by law (meaning that the government can keep its selected candidates in post regardless of violations of the law as set out in the Regulations of Parliament). Even termination of appointment for conviction of a serious offence requires a majority vote of Parliament. Commission members may only be searched or detained with permission of Parliament. This privileged position with regards to the law serves to

make Commission members beholden to Parliament, and in particular the ruling party, thus severely undermining any appearance of independence.

Another key point is that Commissioners can serve for 12 years, which is exceptionally long. There are only 5 Commissioners, and a quorum for decisions is only 2. For a converged regulatory authority with responsibility also for electronic communications, this is a very small number. Additionally, the selection criteria do not include relevant fields of experience for regulation of electronic communications.

To improve transparency and accountability, as required by AVMSD's Art. 30 and Council of Europe Standards, ComCom should have open meetings as its default, ensure its accounts are independently audited annually and published, and publish its annual plan of activities for the coming year and report on its performance of its previous year's plan.

Given the delays in hearing cases within the Georgian judicial system, as highlighted by the Venice Commission⁵, more severe sanctions which could violate freedom of expression should be suspended pending appeal. Only fines imposed under Articles 72.1 and 72.2 of the Broadcasting Law should have immediate effect.

The complaints handling system which applies to media services is inappropriate for video-sharing platforms.

2.3. Licensing and Authorisation – Chapter IV

ComCom should be given powers to investigate ownership arrangements where they suspect there may be hidden – especially offshore – beneficial ownership.

Regulation fees must be calculated and paid on a monthly basis, which is a heavy regulatory burden on media companies. Failure to do so can lead to suspension of a service. As suspension is a severe interference of freedom of expression, suspension for a mere administrative lapse is disproportionate and likely to be in breach of Article 10 of ECHR.

Reinstatement of service after a suspension takes longer for breaches of content violations than other violations. Suspension of service should only be used for the most serious violations, when other penalties have proven insufficient – and service should be reinstated as quickly as possible once breaches have been corrected. It is not proportionate (in the terms of Art. 10 ECHR) to treat a suspension for one sort of violation differently from others.

Neither the licensing, nor the authorisation processes set out in the Broadcasting Law are appropriate for video-sharing platforms. Both the breadth and type of information required in the application process and the regulatory relationship they establish are in conflict with the type of services these are, the kind of responsibility they bear, and the procedural accountability that should define the relationship with the national regulatory authority. An amendment to the Broadcasting Law should foresee a simple system of notification or registration that will allow ComCom to maintain a register of video-sharing platforms under its jurisdiction and monitor the appropriateness of the measures taken by the platforms to achieve the protections required.

⁵ Venice Commission/DG Human Rights and Rule of Law Opinion No. 1008 / 2020 of 22 March 2021

2.4. On-Demand Audiovisual Media Services – Chapter IV⁽¹⁾

The provisions on on-demand audiovisual media services are generally in line with the AVMSD and CoE standards, however, it is recommended that the requirement that programmes adapted to persons with disabilities be included in catalogues and be progressive rather than immediate as it may take time for providers to comply in practice.

2.5. Reception, Transmission and Transit of Media Services – Chapter IV⁽²⁾

In the procedures set out for derogation from the country-of-origin principle an amendment is necessary to ensure that media service providers have the opportunity to respond to an allegation that would result in ComCom derogating from this principle.

2.6. Video-Sharing Platform Services - Chapter IV⁽³⁾

This chapter, which includes the provision on video-sharing platforms needs significant amendments in order to reflect the core elements of the AVMSD's approach to video-sharing platforms and to align with the e-Commerce Directive⁶ and the Digital Services Act⁷. The core elements are:

- Video-sharing platforms are to be held responsible for implementing measures to achieve the aims of protecting users from illegal content and minors from harmful content;
- National regulatory authorities are charged with assessing the appropriateness of these measures (not monitoring content or handling complaints about it);
- Video-sharing platforms are to be held responsible for implementing measures to ensure the commercial communication sold and arranged by others complies with the same standards as exist for commercial communication on audiovisual media services, and they are to be held directly responsible for ensuring the advertising they sell and arrange also complies with these same standards.

The first element reflects the liability exemptions and ban on general monitoring requirements recently upheld by the Digital Services Act, and which do not seem to be aligned in the Broadcasting Law. Specific changes are suggested in this Opinion, crucial elements of which are replacing the focus on “prevention of transmission” with a focus on measures for the protection of users, distinguishing between the commercial communication controlled by the platform and that which is not, and ensuring at least all measures listed in the AVMSD's Art. 28b have been provisioned.

2.7. Licence and/or Authorisation Provisions and Content Requirements – Chapter VI

The provisions related to European Works should state that “a majority” of television time should be devoted to such works in order to align with both the AVMSD and the European Convention on Trans-frontier Television.

The correction and rebuttal provisions and the system for enforcing them, which were involved in the Broadcasting Law prior its amendment were already largely in line with the AVMSD. It is therefore

⁶ The Electronic Commerce Directive (2000/31/EC).

⁷ EU Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

recommended that they be returned in place and slightly improved to bring them closer to the Directive and international standards.

In order to fully eliminate the risk of misinterpretation of the term 'hate speech', Art 55⁽²⁾ of the Broadcasting Law should be amended to clearly exclude critical or offensive speech.

The wording used in AVMSD, regarding the physical, mental or moral development of minors, should be adopted.

There are disparities between the Broadcasting Law and the Code of Conduct which need to be corrected.

Provisions on the use of minors' personal data, subliminal influence, and exclusive rights and short reports have been brought in line with the AVMSD and Council of Europe standards.

2.8. Property of a Broadcaster – Chapter VII

The law refers to people who are "interdependent", a term which is not defined.

There are requirements for detailed annual disclosure of cross-media ownership, yet there appear to be no restrictions on cross-media ownership. If there are restrictions, reference should be included in the Broadcasting Law.

2.9. Advertisement, Teleshopping and Sponsorship - Chapter VIII

Art. 63 has brought the Broadcasting Law more in line with the rules on commercial communication contained in Arts. 9 and 20 of the AVMSD, and it was already in line with both the Directive and the ECTT regarding teleshopping before the most recent amendments. Art. 64 is in exact alignment with the Directive's quantitative limits.

Between the Broadcasting Law and the Law on Advertising, most qualitative standards are implemented. However, it is recommended that Art. 63 be further amended to include the prohibitions aimed at preventing advertising prejudicial to dignity, health and safety.

Art. 69⁽¹⁾ now contains specific provision prohibiting product placement of products forbidden in the Advertising Law of Georgia and of prescription medical products, which means that the rules on Product placement are now better aligned to the AVMSD.

2.10. Accountability and Sanctions – Chapter IX

The Broadcasting Law now contains requirements on accountability that are applied to video-sharing platforms in a way that is not aligned with AVMSD, because such platforms do not have editorial responsibility and therefore cannot be held directly responsible for user-generated videos and advertisements not arranged by them. Video-sharing platforms should be taken out of the scope of Article 70.

The sanctions for violations of rules for protection of minors in the law are severe and potentially disproportionate, especially the possibility of suspending a service for a year for an initial violation. In addition, ComCom should be given the power to issue written warnings for violations of rules for

protection of minors prior sanctioning. As a matter of good practice, warnings should always be given for first violations, especially if they are relatively minor violations.

Suspension of service may constitute a severe interference with freedom of expression. The Broadcasting Law provides for suspensions for repeated offence, and without due regard to proportionality. This is likely to be in breach of Article 10 of ECHR.

3. DETAILED COMMENTS

3.1. Chapter I

Article 1

Art. 1 as amended brings into scope “media services” and “video-sharing platforms” (VSPs). There appears to be a contradiction about the inclusion of radio. The definition of media service now in article 2 includes “audiovisual media service and radio broadcasting” but then the provisions establishing jurisdiction in Art. 1.3 use the term media service provider but specifically exclude free to air radio broadcasting. Jurisdiction over radio is dealt with in Art 1.6. This is confusing and contradictory. **The Art. 1.3 should apply only to audiovisual media services, leaving Art 1.6 to cover radio.**

Otherwise, the rules for services in scope and establishing jurisdiction are in line with the AVMSD, reflecting the Directive’s provisions in its Art 2 and Art 28a almost exactly.

Article 2

Article 2 covers definitions, most of which are in line with the AVMSD and CoE standards. The Broadcasting Law as amended includes several new definitions and replaces some other. A few of these included need alterations/further amendments:

- In the definition of “media service” set out in Art 2(r1) it is recommended to include the **notion of editorial responsibility** as is indicated in the AVMSD’s definition of a media service provider that appears in its Art. 1 and is included in in the proposal for the European Media Freedom Act. Editorial responsibility is a core characteristic of media services also according to CoE standards as reflected in Recommendation CM/Rec (2011)7 criterion 3.⁸ It also helps to distinguish media services from video-sharing platforms, which do not have editorial responsibility.

- In the definition of video-sharing platforms in the new Art 2(r4), perhaps a small mistake has been made (translating the definition in the AVMSD by splitting it into two sentences). The “organisation” should refer to the “programmes and/or user-generated videos” rather than to the video-sharing platform itself. **The definition in the law could be revised as per the proposed text below where the relevant part is underlined:**

“r⁴) video-sharing platform service – a service where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes and/or user-generated videos to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks. **The organisation of programmes and/or user-generated videos**, in particular displaying, tagging and sequencing, is determined by the video-sharing platform provider, including by automatic means or algorithms.”

- The definition of “editorial responsibility” in Art. 2(s4) is missing an important point that is part of the definition of this in the AVMSD and that forms an essential element to the understanding of the term in international standards. **A sentence similar to the one in the AVMSD Art 1(1)(c), which**

⁸ The Council of Minister’s [Recommendation](#) CM/Rec(2011)7 on a new notion of media (2013).

states: editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided” should be included.

- In the new Art 2 (z²¹) The definition of “audiovisual commercial communication is also missing a crucial element, which identifies it as being on behalf of a natural or legal person “pursuing an economic activity”. Especially because the definition in the law includes “ideas and endeavours” in addition to the goods, services, and image contained in the AVMSD definition, **it is important to maintain the distinction that the purpose of this kind of communication is related to economic activity.** This distinguishes it from other kinds of communication that may be paid for or provided in kind, which is defined as “advertisement” now in Art. 2(m) of the law. A better distinction between these two should be developed in the original Georgian language.

- The new Art 2(z²⁰) that defines “code of conduct” is highly problematic as it limits it to codes adopted by ComCom. This is counter to the way the use of codes is envisaged in the AVMSD and to the principles of agility and flexibility set out in the 2022 Council of Europe Recommendation on principles for media and communications governance.⁹ Codes should be able to be developed by industry players as well, ideally with input from civil society and other actors, and overseen by self-regulatory bodies. The AVMSD sets out criteria for codes of conduct in Art 4a. The Directive states that codes shall:

“(a) be such that they are broadly accepted by the main stakeholders in the Member States concerned;

(b) clearly and unambiguously set out their objectives;

(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and

(d) provide for effective enforcement including effective and proportionate sanctions.”

The drafters should consider whether any definition for this is needed. If it remains included it should be amended so that it means a normative act adopted by ComCom, industry self-regulatory bodies or others. The Broadcasting Law should also be amended to include another article on the criteria for codes of conduct listed above.

Article 3

Art. 3 of the Broadcasting Law as revised is not contentious and does not require amending.

3.2. Chapter II

Article 5

The new Art 5.3 (includes oversight of copyright), which is very unusual. Generally, within Europe, the regulation of copyright is left to the courts. This is particularly important as the Commission has no

⁹ [Recommendation](#) CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance.

power to award compensation to copyright owners for breach of copyright. **It is therefore recommended that matters concerning copyright are removed from the functions of ComCom and left entirely to the courts.**

The new Art 5.3 (j) refers to age rating rules for programmes. This is subject to co-regulation in many European Member States. **Consideration should be given to the co-regulation of setting and administrating age rating rules.**

An additional function, as per Article 4a of AVMSD, should be the encouragement of co-regulation and fostering of self-regulation.

Article 6

Art 6.5 says a member of ComCom can only be searched, detained or imprisoned by consent of Parliament (and if detained, can be released if Parliament decrees). Yet, members of ComCom must abide by the law, as other citizens. This provision is unlike any seen in Europe. It also acts to undermine statements of ComCom's independence, as the Parliament has a unique relationship with its members, and can detain – or free them – by special power. **To avoid any speculation of the special relationship this article confers, article 6.5 should be deleted.**

Article 7

Art 7.3 allows for closed sessions “to maintain the confidentiality of information.” This is a very broad exclusion and is contrary to the principle of transparency that is both required by the AVMSD's Art. 30 and the Council of Europe Recommendation on principles for media and communications governance.¹⁰ As a matter of principle, **ComCom should seek to have open sessions unless it is discussing the confidential business information of media companies.**

Art 7.7 sets the quorum for meetings as the majority of members appointed and provides that decisions can be taken by the majority of those members present. This in effect enables decisions to be taken by just two members. The experts have not come across any other national regulatory authority that allows decisions to be taken by just two Commissioners. It is recommended that the number of Commissioners be increased (see Art. 9.1 below) but nonetheless, for so long as the number of Commissioners remains small (under 10), **it is recommended that decisions can only be taken by the majority of members on the list.**

Article 8

Art 8.7 Law now says that any decision taken by ComCom will not be suspended on appeal, unless the court rules otherwise. While the wording of this Article is in line with the wording of Article 30.6 of AVMSD, it must be interpreted in line with the Venice Commission/DG Human Rights and Rule of Law Opinion No. 1008 / 2020 of 22 March 2021¹¹. This Opinion referred to Article 6 of the European Convention on Human Rights: “In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

¹⁰ [Recommendation CM/Rec\(2022\)11](#) of the Committee of Ministers to member States on principles for media and communication governance.

¹¹ Venice Commission/DG Human Rights and Rule of Law Opinion No. 1008 / 2020 of 22 March 2021

The Venice Commission Opinion looked at the effect of new Article 11 of the Electronic Communications Law, which stipulated that decisions by ComCom under Article 46 were to take immediate effect. The Venice Commission Opinion also noted the intention by ComCom to propose an amendment to the Broadcasting Law so that its decisions thereunder would also have immediate effect. That is the amendment under discussion here.

The Venice Commission Opinion noted that the Georgian judicial system worked very slowly due to a large backlog of cases. It states, “Member states are required to organise their judicial systems in such a way that their courts are able to guarantee everyone’s right to a final decision on disputes concerning civil rights and obligations within a reasonable time”.¹²

As a result, the Opinion recommended that the amendment to Art. 11 be revoked and that there be a return to the general principle of domestic administrative procedure law that appeals have suspensive effect for appointment decisions taken by ComCom.

During the interview with Georgian broadcasters, it was stated by several representatives that an appeal from a decision by ComCom takes at least 1 year to be heard at first instance and can take years for final appeals to be heard. It was also clear that expedited applications for interim orders are not being properly considered and that applications are therefore almost never allowed.¹³ There is at least one broadcaster with accumulated fines under appeal, immediate payment of which (pending a full appeal hearing) would be likely to cause the broadcaster to stop operations, and therefore interfere with freedom of expression.

Given the particular problems with the inefficient workings of the Georgian judicial system, it is strongly recommended that in order to avoid the risk of undermining both freedom of expression and the property rights of broadcasting companies, Article 8.7 is amended. Article 8.7 should be expanded to note that fines imposed under Articles 72.1 and 72.2 of the Broadcasting Law – up to 1% of the broadcaster’s annual income – will have immediate effect. It should also allow that higher fines or decisions to suspend the authorisation of a broadcaster may be appealed, and the sanction suspended pending appeal.

This provision should be reviewed in three years’ time to assess whether the judicial system of Georgia is working more efficiently, whereupon the exceptions for more severe sanctions can be removed.

Article 9

Art.9.1 In accordance with Council of Europe standards, a gender balance must be maintained when appointing new members of ComCom.

Art 9.2&3 Commissioners are appointed for 6 years and can be renewed once, so have the opportunity to serve 12 years. This is amongst the longest potential terms of office within Europe. It must be noted that the only other regulatory authorities within the EU where a member may serve 12 years (Austria, Belgium-Flanders, Cyprus, Catalonia, and Slovakia) are not converged regulators, but only audiovisual media regulators. Therefore, Georgia is a complete outlier compared to EU Member States by

¹² ECtHR *Comingersoll S.A. v. Portugal* [GC], No. 35382/97, § 24, 6 April 2000; ECtHR *Lupeni Greek Catholic Parish and Others v. Romania* [GC], No. 76943/11, § 142, 29 November 2016

¹³ Broadcasters reported that judgements nearly always followed ComCom’s own assessments and used ComCom’s decision wording directly in their judgements.

permitting its regulators to serve up to 12 years. **Consideration should be taken to either reducing the (renewable) term, or maintaining it at 6 years but not permitting renewal.**

Art. 9.6 sets out the criteria for candidates to be members of the Commission. Candidates must have “public recognition and confidence.” **These are not measurable characteristics and should be removed.** The Article then sets out the relevant professional background of candidates. Bearing in mind that ComCom is also the regulator for electronic communications, **it is recommended that finance and engineering be added to the possible relevant educational backgrounds. It is also recommended that it is clarified that the (at least) 10 years’ work experience be in one of those relevant fields** (to avoid the possibility of someone with, for example, a law degree who has only worked in retail, be applying).

Art. 9.10 says that “the Government of Georgia” will provide a list of candidates to the President. The Law does not provide who and how in the Government of Georgia selects the candidates. This appears to enable the *government* to select which candidates meet the legal criteria; a process which can only be seen as completely political. **The government should not be the body that provides a list of candidates to the President, as that politicises the process.** An alternative process, which is common practice in many EU Member States, would be for a cross-party Parliamentary Committee to vet the candidates to ensure they meet the statutory criteria before their names are submitted for selection. The Committee may also be given the responsibility for creating a short-list from the eligible candidates.

Art. 9.14 provides for members of ComCom to be selected by simple Parliamentary majority. This is a completely political process and does not comply with either Council of Europe standards on the independence of regulatory authorities¹⁴ or with the requirements for independence under Article 30 of AVMSD. **A new procedure for appointment of members of ComCom must be devised to align with both CoE and AVMSD standards.** One possibility is for members to be appointed by supermajority (2/3 or 3/4 of the full Parliament).

Article 10

Art.10 refers to the dismissal of a member of the Commission “under the procedure established by the Regulations of the Parliament of Georgia.” **The criteria and procedures for termination should be set out clearly in the Broadcasting Law.**

The Regulations state that certain conditions will lead to termination of appointment, *but only with an affirmatory vote in Parliament.* Even imprisonment will not automatically lead to termination of appointment: a majority of Parliament must still vote for it. Of even greater concern, non-performance of duties over time, or a conflict of interest does not automatically lead to dismissal: one third of members of Parliament must propose the dismissal, and three-fifths must approve. This means that a member of the Commission who has a clear conflict of interest and/or is not doing the work expected of him/her, may still remain in post if there is a political will for them to stay. This not only undermines the political independence of members of ComCom but also undermines the reputation and credibility of the Commission. **Members of the Commission should have their**

¹⁴ See Recommendation Rec(2000)23 and the Council of Ministers Declaration of 26 March 2008 on the independence and functions of regulatory authorities for the broadcasting sector

appointments terminated if they are convicted of a serious offence, are absent from post, incapable of fulfilling their duties (for health reasons), or have conflicts of interest which are not resolved quickly. This should not be discretionary, or subject to a (political) vote in Parliament. Furthermore, it is quite normal within Europe for members to be dismissed if they are unable to pay their debts. It is important to ensure that regulators who are in financial straits are not kept in positions where they may be tempted to act corruptly. **Registration on the debtors register should be added to the reasons for termination of appointment.**

Article 11

Art.11 refers to conflicts of interest. Art. 11.1 says “a conflict of interest *may* arise...” and lists the characteristics of conflict. Again, this is treating a conflict as something which is discretionary, rather than absolute. **The law should make clear that the conditions which create a conflict are absolute.**

Art. 11.1.(c) lists as a (potential) conflict the situation when a member “carries out any work in return for payment for a person whose activities fall within the scope of regulation of the Commission.” Work carried out pro bono also creates conflicts of interest as there is usually an expectation of a favour being given in return. **The words “for payment” should be deleted.**

Article 12

Art. 12 refers to the budget of the Commission, which includes fees arising from the Law on Electronic Communications. **Care must be taken to ensure that electronic communications companies are not subsidising the Commission’s work relating to services regulated under this Law.**

Article 13

Art.13.1 Provides that the Parliament *may* decide to have an independent audit done of the Commission. Again, this undermines the appearance of independence. **As good practice, the Commission should arrange itself an annual independent audit of its financial performance. This is particularly so given that all authorised persons and licence holders must have their accounts audited (see Article 70.4).**

Art. 13.2 **As good practice, to aid accountability and transparency, the Commission should add to the annual report its plan of activities for the coming year for the coming year, and a report on its performance against the previous year’s plan.**

Article 14

Art. 14.1 The law requires broadcasters to set up their own “self-regulation” of complaints. This is actually a type of co-regulation, as it is mandatory under law.

Art. 14.2 and 2⁽¹⁾ allows certain categories of complaint to be made directly to either ComCom or the court. This is highly unusual; either ComCom has the power to receive (certain) complaints, or it doesn’t. Although the court may be the situs for appeals, it is unlikely that the courts would have the knowledge or experience to deal with complaints in the first instance. **The law should make clear that complaints which are not dealt with by media services or video-sharing services should in the first instance go to ComCom. They may be appealed to the court.**

Art. 14.4 refers to the procedures under which complaints to ComCom will be considered. The article refers to a number of other administrative procedures and Codes and is not clear. It is important that both complainants and the regulated sector understand exactly how complaints will be handled. **Details of the complaint handling procedure should either be set out in this law, or in a separate guidance note to make the process clear to the public and the regulated sector.**

The **complaint handling system set out in the law for audiovisual media services and radio broadcasters in Art. 14 is not appropriate to video-sharing platforms** because the role of the regulator in relation to video-sharing platforms is to assess the appropriateness of the measures and not to adjudicate on complaints. The addition of **Art. 14.7 that would apply this to video sharing platforms is inappropriate and this article should be deleted.** (For further discussion on the approach to video-sharing platforms see Chapter IV⁽³⁾ below.)

3.3. Chapter IV

Article 37

Art. 37.2(f) prohibits a legal person, “the shares or stocks of which are directly or indirectly owned by a legal person registered offshore” from holding a license or authorisation. There are two potential issues with this. First, the prohibition is written (or at least translated) in a full form, in effect prohibiting *any* offshore investment (including a minority investment). Second, it is not clear how this provision will be enforced. Although the compliance declaration will be published, under Article 45⁽¹⁾.6, the authorisation will be registered within 10 days, not leaving much time for the Commission to actually check the accuracy of the information provided. As there are a large number of corporate investors that have at least some offshore holdings, this provision may unintentionally prevent investment in Georgian broadcasting by many international investors. **If the intention is to prevent broadcasters being owned by secret beneficiaries, Art. 37.2(f) should be changed (a) to make it clear that the prohibition is to majority offshore holdings, and (b) to include effective enforcement provisions.**

Article 37⁽¹⁾

Art. 37⁽¹⁾ requires applicants for licenses/authorisations to complete declarations of compliance. However, there are no provisions setting out the Commission’s powers to investigate these declarations and to ensure they are correct.

Article 38⁽¹⁾

Art. 38⁽¹⁾ requires TV broadcasters to put certain programmes in the official Georgian language in the “broadcasting network”. However, the “broadcasting network” is defined (Art. 2(z10) as “a document prepared by a broadcaster that includes titles and a brief description of programmes, and broadcasting time.” **Given the way the term is used in the Law, the definition of “broadcasting network” appears incorrect, as it should apply to the programmes, and not a document that describes the programmes.** If the intention behind this provision is in fact to require TV broadcasters to have their programmes in the official language, it would be helpful to state whether dubbing and subtitles are adequate to fulfil this obligation for foreign programming. It would also be helpful to have a reference here to Article 51⁽¹⁾.

Article 39

Art. 39 refers to prolongation of licenses, which happen automatically unless a licensee has been subject to a harsh sanction under Art. 72.2. The translation of this article is not clear, but it appears that any such sanctioned licensee has to pay an additional amount to retain their license. This is an indirect and additional sanction, which lacks transparency and can be seen to be a violation of freedom of expression as it does not seem to be proportionate. **This additional fee in Art. 39 should be deleted.**

Article 45⁽¹⁾

Art. 45⁽¹⁾.12(e) requires authorised broadcasters to bring their technical means and quality of service “in line with the norms and standards effective in the territory of Georgia”. Are these ‘norms and standards’ set out clearly in another law? If so, **there should be a clear legal reference to the applicable technical and quality norms and standards. If they do not exist, then this provision (Art. 45⁽¹⁾.12.(e)) should be deleted.**

Art. 45⁽¹⁾.18&19 set out the time periods for resuming authorisations after they have been suspended. As suspending an authorised service is an interference with freedom of expression, every effort must be made to reinstate authorisations as soon as possible once the reason for the suspension has been rectified. There is no justification for taking longer to register after a suspension for content violations than any other violations. **Authorisations which have been suspended under article 45⁽¹⁾.14(c) should be recorded within three working days of receiving notification that the violation has been eradicated.**

Overall, the system of authorisation as outlined in the Broadcasting Law differs only slightly from licensing and is not appropriate for video-sharing platforms. Among states implementing the AMVSD, simpler notification or registration processes have been put in place that enable the regulators to maintain registers of these services with updated contact information. Ofcom in the UK, which despite leaving the EU shortly after, was one of the first to implement the AVMSD, has a very good example of such a system.¹⁵ Bulgaria, Italy and the Netherlands could also be looked at as examples. If needed, additional powers are sometimes given to national regulatory authorities to enable them to collect information from video-sharing platform providers.¹⁶ **It is recommended that the law be amended to set out a system for video-sharing platforms that is separate from the licensing and authorisation regime in place for audiovisual media service providers.**

3.4. Chapter IV⁽¹⁾

Article 45⁽²⁾

Chapter IV⁽¹⁾ is a new chapter with provisions on on-demand audiovisual media services. Art. 45⁽²⁾ sets out requirements for catering to the needs of people with disabilities, protection of minors and European Works. These provisions are generally in line with the AVMSD and CoE standards, especially

¹⁵ Details of their approach can be found at: [OFCOM-Approach](#).

¹⁶ For an overview of approaches see the [report](#) commissioned by the European Commission on the implementation of the new provisions of the AVMSD.

since according to Art. 76.40 states now that ComCOM will develop rules that set out how programmes adapted to persons with disabilities will be included in catalogues progressively rather than immediately as it may take time for providers to make adjustments.

3.5. Chapter IV⁽²⁾

Article 45⁽³⁾

The new Chapter IV⁽²⁾ about reception and transmission includes Art. 45⁽³⁾, which sets out the procedure in cases of derogation from the country-of-origin principle and the free movement of services. This article refers to derogations in instances of manifest and grave violation of articles 55⁽²⁾.1, 55⁽²⁾.2, 56⁽¹⁾ or 56⁽²⁾, which cover incitement to terrorism, hate speech, and the protection of minors. The provisions in Art. 45⁽³⁾ are generally in line with the provisions related to derogations in Art. 3 of the AVMSD, though the reference to 56⁽²⁾, which sets out criteria for rating categories, may make it vulnerable to challenge. The Directive also specifies that media service providers should have the opportunity to express their views on the alleged infringement. The necessary steps of informing the media service provider are included in Art. 45⁽³⁾, **but it is recommended that the law also expressly notes how a media service provider will be able to respond to an allegation.**

3.6. Chapter IV⁽³⁾

Through the addition of this Chapter, the law introduces provisions related to video-sharing platforms to the Law on Broadcasting. The aim of the drafters is to bring the Georgian law up to date with the type of services being used by the public and in line with the AVMSD. Video-sharing platforms were brought into the scope of the AVMSD with its revision in 2018. The AVMSD had previously been referred to as instituting a two-tiered system due to the somewhat differing rules for linear and on-demand audiovisual media services. The inclusion of video-sharing platforms in the scope of the Directive added a third tier, which involves not only differences in rules, but an entirely different approach due to the different type of responsibility that video-sharing platforms have.

Video-sharing platforms do not have editorial responsibility, and, as information society services performing “hosting,” they maintain the limited liability enshrined in the e-Commerce Directive of 2000, very recently re-affirmed and qualified in the 2022 Digital Services Act (DSA). This means that they cannot be held responsible for the programmes or user-generated content that they host. They can only be held responsible for any advertising they market, sell or arrange themselves. The AVMSD is intended to help protect users of video-sharing platforms and level the playing field between video-sharing platforms and audiovisual media services, as both are competing for audiences and advertisers. The key elements of the AVMSD’s system for video-sharing platforms are:

- Video-sharing platforms are to be held responsible for implementing measures to achieve the aims of protecting users from illegal content and minors from harmful content, with co-regulation highlighted for this;
- National regulatory authorities are charged with assessing the appropriateness of these measures (not monitoring content or handling complaints about it);
- Video-sharing platforms are to be held responsible for implementing measures to ensure the commercial communication sold and arranged by others complies with the same standards as exist for commercial communication on audiovisual media services, and they are to be held

directly responsible for ensuring the advertising they sell and arrange also complies with these same standards.

To be in line with the AVMSD, and the DSA, the Georgian Law should take the same approach. This should be reflected not only in the provisions in Chapter IV⁽³⁾ but also in the provisions on accountability and sanctions in Chapter IX and other parts of the Broadcasting Law, which therefore needs to be revised.

Article 45⁽⁴⁾

The new Art. 45⁽⁴⁾ requires video-sharing platforms to “prevent the transmission of video clips, programmes and audiovisual commercial communication” that may harm minors, promote discrimination, incite hatred or contain elements of a crime. This article is problematic in two ways.

Firstly, the AVMSD does not call for *a priori* **prevention of transmission as this would imply an obligation for general monitoring, which is strictly prohibited under the e-Commerce Directive and the DSA**. The list of measures suggested in the AVMSD for video-sharing platforms to take, which has also been included in the Law, does not contain any that amount to prevention of transmission of content. **The phrase “to prevent the transmission of” should be replaced with “to protect the public from...” in the first paragraph of Art. 45⁽⁴⁾.**

Secondly, the AVMSD is limited in the scope of harms from which it expects video-sharing platforms to protect their users and **Art. 45⁽⁴⁾ goes much beyond that in a way that could have serious implications for freedom of expression**. Art. 28b of the AVMSD requires measures to protect “minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development” in a manner similar to audiovisual media services, even referring to the provisions applicable to those services. The measures that can be taken are varied and most do not amount to preventing transmission (e.g. age verification, parental controls). The point a) in Art. 45⁽⁴⁾ would be sufficient to comply with the AVMSD on this issue if the preceding sentence is changed as recommended above.

The AVMSD’s Art. 28b also requires measures to protect “the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred”. Incitement to violence or hatred is unprotected speech according to the UDHR and the ICCPR and is not the same as promoting discrimination. The extensive list of protected categories in the Law is commendable but **point b) in Art. 45⁽⁴⁾ should be amended to refer only to incitement to violence or hatred based on these categories and not “discrimination”**.

Alignment with the AVMSD’s Art. 28b only requires Georgian law to ensure video-sharing platforms to protect the general public from three specific areas of illegal content. They must protect from content the dissemination of which constitutes an offence concerning terrorism, child sexual exploitation, and racism or xenophobia. For the purposes of aligning with the AVMSD and international standards in relation to these three forms of illegal content, **it is recommended that Art. 45⁽⁴⁾(c) be changed from a general reference to the Georgian Criminal Code to a specific reference to “content the disseminations of which constitutes a criminal offence according to the Georgian Criminal Code, related to terrorism, child sexual exploitation, and racism or xenophobia.”** If Georgian lawmakers decide to begin implementing the DSA, there will be a need to produce legislation that covers illegal content more generally. However, this should be done with a more horizontal piece

of legislation that applies to a wider group of digital services and includes the exclusions and other provisions in the DSA aimed at protecting expression and innovation.

Article 45⁽⁵⁾

The new Art. 45⁽⁵⁾ is also problematic in two important ways. Firstly, it seems to attempt to make a distinction between the commercial communication sold, marketed and arranged by the video-sharing platforms themselves and the commercial communication that is sold, marketed and arranged by the users of the platform, but the wording of 45⁽⁵⁾.2 does not reflect the distinction in the AVMSD. Unless it is a translation problem, the paragraph incorrectly puts the burden of compliance with the qualitative standards on the video-sharing platform for the commercial communication that it does not sell, market or arrange. **To align with the third element of the AVMSD's approach listed above, the point should instead be: "Video-sharing platform providers shall take measures as provided for by this Law to ensure that audiovisual commercial communications that are not marketed, sold or arranged by them comply with the requirements under paragraph 3 of this article."** It is the commercial communication that should comply with the standards not the video-sharing platform, which instead should be held responsible for the measures.

Secondly, Art. 45⁽⁵⁾.3 unnecessarily lists standards for commercial communication on video-sharing platforms as if they were different from those required for other services covered in the Law. The qualitative standards in Art. 9.1 of the AMVSD, which seem to have been copied here apply to all services covered by the Directive and, for the purposes of alignment, should apply to all services in the scope of the Georgian Law (for more on this see discussion of Chapter VIII below). **To align with the purpose of the AVMSD and appropriately highlight the "level playing field" among services financed by advertising, paragraph 3 should simply refer to the other provisions in the Broadcasting Law where the standards for commercial communication are covered and the Law on Advertising.**

Article 45⁽⁶⁾

The first line of the new Art 45⁽⁶⁾ is missing some important elements. **The first line of this article should somewhere include the phrase "as appropriate"** because not all of the measures will be appropriate for all video-sharing platforms. This phrase is in Art. 28b.3 of the AVMSD. One measure listed in the Directive that is important for achieving the protection of minors has been left out, namely, **a measure of "establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content", whether in relation to programmes or user-generated content should be included.** Also, the phrasing of the measure listed in line c) should be changed to refer specifically to Art. 45⁽⁴⁾ as the source of concern about content. The current phrasing as translated into English is also confusing because of the addition of the "or to assess the content" at the end. **The text in the original language should be re-examined to ensure it is in line with Art. 28b.3(d) of the AVMSD.**

Article 45⁽⁷⁾

The provisions of the new Art. 45⁽⁷⁾ are aimed at establishing the principle of proportionality in relation to the measures to be taken by video-sharing platforms and the oversight role of the Commission. One slight, but **an important change is needed in paragraph 2** because it is not in line with the AVMSD, and likely not practically implementable, for the Commission to "determine the conditions and volume of measures to be taken" by the video-sharing platforms. **This should be changed to "assess the**

appropriateness of the measures taken". The role of the Commission is to be assessing after the fact whether the measures are appropriate to achieving the policy goals in Art. 45⁽⁴⁾ and holding the platform providers accountable for that, which in practice should involve a feedback loop aimed at learning and continual improvement rather than a system of violation and penalty.

3.7. Chapter V

There are no comments

3.8. Chapter VI

Article 51

Art. 51 of the Broadcasting Law was revised, bringing it more in line with the requirements for European works in both the AVMSD and the European Convention on Transfrontier Television. However, the article seems to be missing the important word "majority". The new Art. 51 states "A television broadcaster shall, where possible, reserve a part of its television time (excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping) for European works", which does not specify the size of the part that should be reserved. **This article needs to be revised to say "a majority part of its television time"** in order to be in alignment with the Directive and the Convention.

Article 51⁽²⁾

The new Art. 51⁽²⁾ with obligations aimed at satisfying the rights of persons with certain disabilities. The intention of this article is sound and in line with the intention of Art. 7 of the AVMSD, however the how it establishes to whom it applies is problematic. Art. 51⁽²⁾ refers to: "Audiovisual media service providers and persons authorised to transmit broadcasting", whereas the AVMSD applies these obligations to "media service providers". Because video-sharing platforms also must be authorised (this in itself is problematic as discussed in the section on VSPs above), and broadcasting includes radio, this is confusing. **It is recommended that Art. 51⁽²⁾ be revised to refer only to "audiovisual media services providers"**. If the policy makers want radio to also be made more accessible, it could instead refer only to "media service providers". Either option would be in line with the AVMSD and be clearer. It is important that this provision be clear and not apply to services that do not have editorial control.

Article 52 and 52⁽¹⁾

Art. 52 has been revised and Art. 52¹ added, which replaced the right of rebuttal with a right of reply that is directly regulated by ComCom rather than through the previous 'self-regulatory' mechanism.

There is no right of reply or correction in the Universal Declaration of Human Right, the International Covenant of Civil and Political Rights, or in the European Convention on Human Rights. This has resulted in a somewhat contradictory and inconclusive, as well as limited, history of case law in the European Court of Human Rights, though one which has upheld the principle of editorial freedom.¹⁷ Some European states have statutory rights of reply or similar rights of correction while others handle

¹⁷ For discussion of this contradictory history, see O'Fathaigh, R. (2012) "The Recognition of a Right of Reply under the European Convention", *Journal of Media Law*, 4:2, 322-332; O'Fathaigh, R. (2018) "[Eker v. Turkey](#): The Right of Reply Under the European Convention" *European Human Rights Cases*, 2018, Issue 1.

right of reply through self-regulatory bodies. The Council of Europe has a clear understanding of the right and recommendations for its implementation, which have provided the basis for how it is handled in many countries and for the provisions in the AVMSD.

The Council of Europe position on the right of reply dates back to Resolution (74) 26 from July 1974. Key elements of that resolution are that this right is linked to damage to a person's "dignity, honour or reputation" and that it **can be exercised in response to "incorrect facts** relating to him which he has a justified interest in having corrected".¹⁸ This resolution defined the **individual who can claim this right as either a natural or a legal person**. It also defined **redress as being able to take a variety of forms**, legal (in law) or otherwise, namely as complaints to press councils. In an appendix, it suggested minimum rules applicable to all media on the speed and prominence of any reply, exceptions notably related to the public interest and the information being proven to be accurate. It also established that disputes be brought before a tribunal with the power to order publication of replies when it upholds complaints.

In 2004, the Committee of Ministers adopted a recommendation aimed at updating the 1974 position in response to the technological changes in media industries. Recommendation (2004)16[1]¹⁹ recalled and repeated most of the 1974 resolution including the understanding of the individual and requirement for redress through a tribunal or other body. This recommendation noted additionally that the right of reply **should be available regardless of an individual's nationality or residence** and widened the scope of media to whom it would apply. It expanded the list of exceptions that could be grounds for refusal and included a provision suggesting that in order to "safeguard the effective exercise of the right of reply" media should make the details of a contact person available, and states should designate time periods for the obligatory maintenance of archives.

The position of the Council of Europe is reflected also in the European Convention on Transfrontier Television (ECTT) from 1989, in which Article 8 requires states to ensure a right of reply or "comparable legal or administrative remedies" to correct inaccurate facts or information.²⁰ The AVMSD, which is the successor to the Television without Frontiers Directive adopted in parallel to the ECTT, states that, "any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies." This provision identifies **the crucial link between the right of reply and the assertion of incorrect facts**. It specifically notes reputational damage as a justification for seeking reply.

The ECTT also allows that "equivalent remedies" could be in place in lieu of a right of reply and there are a variety of ways states implement the right or its equivalent. The 2004 Council of Europe Recommendation clearly acknowledges in its recitals that "right of reply can be assured not only through legislation, but also through co-regulatory or self-regulatory measures."²¹ It further states that disputes should be handled by "a tribunal or other body with the power to order the publication of the reply,"²² which according to the explanatory memorandum "could be an ordinary court, an independent regulatory authority or a self-regulatory body whose members have agreed to abide by its decisions"²³. **Council of Europe standards therefore require effective recourse for any person whose request for a reply has been denied and the ability to appeal to a body that can require the**

¹⁸ [Resolution](#) (74) 26 of the Committee of Ministers on the Right of Reply - the Position of the Individual in Relation to the Press. Paragraph 1 and Article 1.

¹⁹ [Recommendation](#) Rec(2004)16[1] of the Committee of Ministers to member states on the right of reply in the new media environment.

²⁰ Article 8 of the 1989 [European Convention on Transfrontier Television](#) and the accompanying Explanatory Report.

²¹ Recitals of the Recommendation Rec(2004) 16[1] supra note 3.

²² Paragraph 8 of the Recommendation Rec(2004)16[1] supra note 3

²³ Paragraph 33 of the "[Explanatory Memorandum](#) to the draft Recommendation on the right of reply in the new media environment" CM(2004)206 addendum 17 November 2004.

request to be fulfilled if found to be legitimate, however, they also allow for that to be done through a variety mechanisms.

The OSCE Representatives on Freedom of the Media and the expertise produced by their office, have consistently recommended any right of reply be both limited to correcting inaccuracies and handled through self-regulatory bodies.²⁴ Within the context of EU law, namely the AVMSD, states also have flexibility in terms of how the right of reply is to be exercised as and the procedures used. The Directive does not prescribe a system. In Article 28 it requires Member States to ensure:

- the exercise of the right of reply or equivalent remedies is not hindered by unreasonable terms and that replies are transmitted within a reasonable time;
- the right and system to exercise it is applicable to all broadcasters;
- that time spans in any procedures are such that persons from other Member States can exercise that right
- that and procedures for resolving disputes over the right of reply or equivalent remedies can be subject to judicial review.

These can be seen as minimal criteria for any system in place, which could be within a self- or co-regulatory system or the competence of the regulatory authority. There is no requirement for a national regulatory authority to be responsible and the Directive in general encourages the use of co-regulation and self-regulation in Article 4a.

The right of rebuttal in Art 52.2,3&4 of the Broadcasting Law prior to the most recent amendment was therefore already generally in line with both Council of Europe standards and the AVMSD. The basic requirements were met by that provision, however, to make it more precise and mirror the AVMSD and the 2004 Council of Europe's Recommendation more closely, the previous formulation of Art 52 should be reinstated with following changes:

1. Insert "whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts" following the phrase "a person concerned," in Article 52.2.
2. In paragraph 3 replace "shall not exist" with "can be refused" and add a point (g) "the correction or rebuttal would involve a punishable act, render the broadcaster liable to civil-law proceedings or transgress standards of public decency"
3. Add a 52.5 stating "The dissemination of opinions and ideas must remain outside the scope of the provisions in paragraphs 2,3 &4."

The location of the right in the previous formulation of Art. 52 placed it under the purview of the self-regulatory system for enforcement purposes.²⁵ This was in line with the AVMSD and Council of Europe standards as long as that system could ensure publication of replies in cases of dispute and was subject to judicial review. The new formulation in Art. 52⁽¹⁾ gives ComCom direct responsibility, which given the concerns raised above with structural independence (selection process, length of terms, etc.) there are greater risks to freedom of expression.

The right of reply has always been contentious from a freedom of expression perspective. It can be an important tool through which citizens and business can protect themselves from damaging

²⁴ See for example: [Legal Review](#) of the Right of Reply as Prescribed by the Statute on Periodic Press and News Agencies of Slovakia (March 2019); [Legal analysis](#) of the draft law on mass media of the Republic of Uzbekistan (November, 2021) and earlier reactions to right of reply proposals "[Latest amendments to Slovakia's](#) draft Press Act an improvement but still fall short, says OSCE media freedom representative" (March 2008).

²⁵ This is according to the violation response measures set out in Article 59¹.

falsehoods. Previous experience has demonstrated that it can also be easily abused by powerful political and business elites.²⁶ At the root of abuse problems in other countries is an overly broad understanding of the right of reply that included opinion and interpretation without an accuracy requirement. It is therefore crucial to ensure the right is defined narrowly in connection with inaccuracies in line with the standards discussed above, and that implementation remains mainly in the hands of those with editorial responsibility, with effective recourse for complainants in cases of dispute. **The purpose of this right is to correct damaging inaccuracies and should be a quick and relatively straightforward procedure. More systematic or malicious falsehoods should be handled by courts under defamation law.**

Article 55

Art. 55 places obligations on “general broadcasters” which is not defined in the Broadcasting Law. The term “general broadcaster” must be defined, or the terms which are defined used instead.

Article 55⁽²⁾

Art.55⁽²⁾ refers to prohibitions on hate speech and incitement to terrorism.

A number of stakeholders interviewed for the purpose of this initial advice confirmed that the term ‘hate speech’ is widely used in Georgia to refer to critical and/or offensive comments, and its meaning is not limited to the strict definition set out in the AVMSD. The ECtHR case law has made clear that critical comments and the statement of controversial views are not in themselves hate speech.²⁷ This is supported by the recent Council of Europe Recommendation on Hate Speech which says, “freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population;.”²⁸

Furthermore, the definition refers to hateful statements that are based on characteristics pertaining to typically disadvantaged groups. So, for example, making a threatening statement about someone not based on their personal membership of a minority group, or personal characteristic as set out in the Charter of Fundamental Rights (The Charter)²⁹, is not hate speech. The statement may well be in breach of another Article in the Law or Code of Conduct but cannot be treated as hate speech.

Art. 55⁽²⁾.1 mirrors the wording of Article 6.1 of AVMSD and lists the protected characteristics contained in Article 21 of the Charter. However, it provides an exception to the prohibition on hate speech “where this is necessary in connection with the content of the programme”. This is insufficiently clear. It would not ensure, as ECtHR case law requires, that exceptions are only acceptable in rare cases, for example, in documentary programmes about extremist groups where a film of someone speaking hate speech might be justifiable.³⁰ Furthermore, provisions regarding exceptions should require that there must be a clear intention on the part of the programme to report on the hate speech and not disseminate it.

²⁶ Slovakia and Slovenia are notable examples of where this has happened. See the multiple interventions of the OSCE Rep on Freedom of the Media in relation to Slovakia and on Slovenia, see [Milosaljević, M.](#) (2012) *The Right of Reply and Correction: The Slovenia Experience*

²⁷ See for example [Gündüz v. Turkey](#).

²⁸ See Preamble to CM/Rec(2022)16¹ on combating hate speech

²⁹ The Charter of Fundamental Rights of the EU, Article 21. **Non-discrimination** – forbids [discrimination](#) on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or other belief, political opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

³⁰ See for example, [Jersild v Denmark](#) .

This wording should be amended to make it clear that “**exceptionally**, where this is necessary, in connection with the **context** of the programme and there is **no intention to disseminate the speech in question.**” In no other circumstances would hate speech be justifiable.

The AVMSD requires Member States to “ensure by appropriate means” that hate speech is not broadcast. Therefore, either a statutory or co-regulatory means of regulating hate speech is needed. In Georgia there has been no oversight or review by ComCom of the effectiveness of the required ‘self-regulation’ by broadcasters and therefore, it could not be said that the existing self-regulatory mechanisms provide “the appropriate means” for Georgia.

There are two options for Georgia for the regulation of hate speech: either it is regulated by ComCom as the National Regulatory Authority, or it is subject to a properly established co-regulatory system that complies with AVMSD standards.³¹ It should be noted in this regard that hate speech in advertising is subject to self or co-regulation in nearly all EU Member States.³² Whoever takes responsibility for regulating hate speech in Georgia, either ComCom or a new co-regulatory mechanism, incidents of hate speech should be collated and reported on annually.

Under the revised Broadcasting Law ComCom, as the NRA, takes responsibility for the regulation of hate speech. During the interview ComCom representatives understood the European interpretation of hate speech. Nevertheless, representatives of the civil society organisations and media outlets interviewed for the purpose of this initial advice cited examples of ‘interpretation creep’ by ComCom to extend the scope of broadcast content regulation over recent years. They have also stressed the high risk of political pressure on ComCom in view of the current political landscape and constituency of the Parliament.

In these circumstances it is recommended that hate speech regulation is a matter for co-regulation under an improved co-regulatory mechanism. In case the decision is made in favour of statutory regulation, Art. 55⁽²⁾ should be amended to expressly state that critical and/or offensive speech is not to be considered hate speech.

To be clear, as well as being prohibited by AVMSD, hate speech is an unprotected category of speech, and shall be prohibited under respective legislation. Indeed, the Georgian criminal code addresses hate speech in Article 239⁽¹⁾.

Article 56

Arts. 56.4 & 56.6 prohibit “pornography and programmes or advertisements abusing a citizen’s and a person’s dignity and his/her fundamental rights and that contain obscenity” unless it is broadcast in encrypted form. There are two issues here. First, ‘obscenity’ is not covered or defined in the Code of Conduct. “Obscene behaviour and offensive language” is referred to in the Code of Conduct, with limitations on its broadcast to times when children are unlikely to be watching (see Para.40 of the Code of Conduct). Second, abuse of dignity/fundamental rights is not defined anywhere or referred to at all in the Code of Conduct. There is an obligation on member states (Art. 9 AVMSD) to ensure that *commercial communications* do not prejudice respect for human dignity. However, AVMSD does not extend this obligation to programmes as the Broadcasting Law does. There should be a distinction between commercial communications and programmes here. **Art. 56.4 should be amended to mirror the terms and restrictions contained in the AVMSD in relation to commercial communications, and**

³¹ The AVMSD sets out standards for co-regulation through the use of codes in Article 4a.

³² In 2014, 26 out of the then 28 Member States self- or co-regulated advertising.

the Code of Conduct in relation to programmes: commercial communications that abuse a person's dignity should be prohibited; programmes that contain obscene behaviour and offensive language should not be prohibited, but rather restricted to times when children are unlikely to be seeing them. Only pornography should be limited to broadcast in encrypted form.

Art. 56.5 refers to labelling and scheduling of programmes to ensure they do not impede the "development and formation (of a child) as an independent and socially responsible person." This formulation is unique and not easily assessable. **It would be preferable to change the wording in Art. 54.5 to mirror the wording in both the AVMSD and the ECTT – "the physical, mental or moral development of minors".**

Article 56⁽¹⁾

Art. 56⁽¹⁾ refers to the "physical, psychological, intellectual and spiritual... and socialisation" of minors. There is no definition of "socialisation of minors" and it is not covered in the Code of Conduct, which refers to "physical, psychological, mental or moral" harm. **Art. 56⁽¹⁾ should be amended to say "moral" instead of "spiritual.**

Article 56⁽³⁾

Art. 56⁽³⁾ on the inadmissibility of using personal data of minors for commercial purposes is a welcome addition that brings the law in line with the AVMSD and the GDPR provisions in on this issue.

Article 57

Art. 57 contains a ban on subliminal influence. Although the AMVSD and ECTT only contain bans on subliminal techniques in commercial communication, a blanket ban does not contradict these in any way.

Article 58

Art. 58 implements the provisions on exclusive rights and short news reports in Arts. 14 and 15 of the AVMSD. These are in line with the Directive and with Art. 9 of the ECTT.

Article 59

Art. 59, which requires the broadcasting of news and social programmes in prime time refers to a "general broadcaster" as well as the public service media. **The Broadcasting Law should include a provision to update the term "general broadcaster" so that it is in line with the terminology used in the rest of the text (audiovisual media service and radio broadcaster) and be specific so that it is clear to which services those obligations apply.**

3.9. [Chapter VII](#)

Article 60

Art. 60 refers to a person who is “interdependent” with another. This is not an internationally recognised legal term. **If the term “interdependent” does not have a clear legal meaning within Georgian jurisprudence, the full details of the restrictions should be set out.**

Article 61

Art. 61 requires authorised persons and licence holders to provide extensive ownership information to the Commission on an annual basis. This includes information about cross-media ownership, including video-sharing platforms, media service providers, periodicals and news agencies. However, there are no provisions in this law that cover any restrictions on cross-media ownership. Are there restrictions in other laws? **If there are restrictions in other laws on cross-media ownership, they should be referred to in the Broadcasting Law.**

3.10. Chapter VIII

Article 63

The recent additions to Art. 63 bring the broadcasting Law more in line with the rules on commercial communication contained in Art. 9 of the AVMSD. The new rules for the placement of advertising spots in broadcast children’s programming in Art. 20 of the AVMSD are also implemented in Art. 63. The Art. 63 was already in line with both the AVMSD and the ECTT regarding teleshopping.

An important element seems missing however, regarding well-being. The AVMSD requires commercial communication not to prejudice human dignity, nor encourage behaviour prejudicial to health or safety. **It is recommended that Art. 63 be further amended to include these prohibitions aimed at preventing advertising prejudicial to dignity, health and safety.** Although the Law on Advertising does include provisions related to the protection of health, such as its provisions on alcohol and various classes of pharmaceuticals, it would be useful to have it clearly stated also in the Broadcasting Law since other qualitative standards already are stated.

Article 64

The quantitative limits on audiovisual commercial communication on television in Art. 64 are now in line with those in the AVMSD’s Art. 23.

Articles 65 and 66

Article 65 and 66 of the Broadcasting Law were not amended. These cover “social advertisements” and rules on pre-election advertisements and are out of the scope of this expertise.

Article 66⁽¹⁾

The rules on the financing of broadcasters or production of programmes by public or state bodies contained in Art. 66⁽¹⁾ of the Broadcasting Law are interesting. Such rules are outside the scope of the AVMSD or the ECTT, however, the rules in this article are in line with the requirements in Art. 24 of the proposed European Media Freedom Act (EMFA) aimed at ensuring fairness and transparency in the allocation of state advertising and support of programming. The sponsorship rule contained in Art. 67.1 can also be seen as being in line with the aims of this EMFA proposal.

Article 69⁽¹⁾

The new Art. 69⁽¹⁾ includes rules in the AVMSD regarding product placement. Art. 69⁽¹⁾ contains specific provision prohibiting product placement of products forbidden in the Advertising Law of Georgia, which includes cigarettes and other tobacco products and electronic cigarettes or their refills, and forbids advertising prescription medical products. This means that the rules on Product placement are now better aligned to the AVMSD.

3.11. Chapter IX

Article 70

Art. 70 now contains requirements on accountability that are applied to video-sharing platforms in a way that is not aligned with AVMSD. As explained above, as video-sharing platforms do not have editorial responsibility, they cannot be held responsible for the compliance of user-generated videos or advertisements which they do not themselves sell. A good example of how the accountability and sanctioning process should work can be seen in the recent sanctioning of YouTube by the Italian regulator AGCOM. In this case, the advertising agency Top Ads Ltd was held directly responsible for the massive dissemination of illegal gambling-related ads on YouTube, while Google/YouTube was sanctioned for not having appropriate measures in place because Top Ads was one of its “verified partners”.³³ **Video-sharing platforms should be taken out of the scope of Article 70 and the law should be amended to reflect a separate approach to assessing the appropriateness of measures taken by video-sharing platforms with accompanying sanctions.**

Article 71

Art. 71.1 states that if a violation is confirmed, a warning may be given as an initial sanction, unless the violation has to do with protection of minors (including scheduling violations). This is a recent change (2022); the previous version of the Law says a warning *will* be given.

It is disproportionate to not permit warnings as an initial sanction in cases of protection of minors, especially as most violations are likely to be minor – and many may in fact be outside a broadcaster’s control (for example during live programming if a guest says something which is unsuitable for children.). There is no justification for treating violations relating to protection of minors differently from other violations: there is a system of escalating penalties set out in the Law which should apply to all violations.

It is good practice to always start with a warning, and only issue a fine on a second breach of the same violation. Exceptionally, it is acceptable to give the regulatory authority some discretion to issue a fine in a case of a very serious breach, even if it is a first offence.

Article 71.1 should be amended in a way that NRA issues warnings for violations of Articles 56⁽¹⁾ and 56⁽²⁾ prior sanctioning Art. 71.4 should therefore be deleted.

Art. 71.6 enables the Commission to suspend a service for a year if a violation of provisions for protection of minors is not eliminated. **This is a disproportionate sanction, which violates the principle of freedom of expression as set out in Article 10 of the ECHR.** The process for consideration

³³ See [report](#) by EPRA and the [report](#) by the European Audiovisual Observatory

of a suspension of service which apply in the case of other violations (i.e. only after a written warning or fine has been issued) should also apply to violations of Articles 56⁽¹⁾ and 56⁽²⁾ (see Art. 73.3) **Art. 71.6 should be deleted.**

Article 72

Art. 72.2 enables the Commission to suspend a service effectively on a second violation. As suspension of service is a significant interference with freedom of expression, any suspension must comply with the provisions of Art.10 of the ECHR. Suspension for the second offence may raise the risk of disproportionality in the context of Art.10. Therefore, **it is recommended that Art. 72.2 be deleted.**

Article 74

Art.74.1(d) enables the Commission to revoke a licence (over-the-air radio services) if a violation is not eliminated after the period of suspension. **Care must be taken to comply with Article 10 ECHR before considering revocation of any licence,** as revocation is an interference with freedom of expression.

3.12. Chapter X

No comments.

3.13. Chapter XI

No comments.

4. RECOMMENDATIONS

The Law on Broadcasting should be revised taking into consideration the spirit and all commentaries involved in the Section 3 of this opinion. Key recommendations are listed below:

Chapter I

1. Article 1.3 should be amended to apply only to audiovisual media services, leaving Art 1.6 to cover radio.
2. In the definition of “media service” set out in Art 2(r1) it is recommended to include the notion of editorial responsibility.
3. The definition of video-sharing platform in Art 2(r4) should be revised to replace “the organisation of video-sharing platform services” with the words “The organisation of programmes and/or user-generated videos”.
4. The definition of “editorial responsibility” in Article 2(s4) should be revised to make it clear that editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided.
5. The definition of “audiovisual commercial communication” in the new Art 2 (z2¹) should be revised to make explicit reference to its connection with the pursuit of economic activity and a distinction made with the new Art 2(m) on advertisement.
6. The definition of “code of conduct” Art 2(z20) should be amended so that it means a normative act adopted by ComCom, industry of self-regulatory bodies or others. The Broadcasting law should also be amended to include another article on the criteria for codes of conduct listed in Art 4a of the AVMSD.

Chapter II

7. It is recommended that matters concerning copyright are removed from the functions of ComCom and left entirely to the courts.
8. Only fines imposed under Articles 72.1 and 72.2 of the Broadcasting Law should have immediate effect. Any more severe sanction should be suspended pending appeal.
9. Consideration should be given to the co-regulation of setting and administrating age rating rules.
10. An additional function of ComCom, as per Article 4a of AVMSD, should be the encouragement of co-regulation and fostering of self-regulation.
11. To avoid any speculation of the special relationship this article confers, Article 6.5 should be deleted.
12. ComCom should seek to have open sessions unless it is discussing the confidential business information of media companies.
13. It is recommended that decisions can only be taken by the majority of members of the Commission on the list (and not the majority attending a meeting).
14. Consideration should be taken to either reducing the (renewable) term of members of the Commission, or maintaining it at 6 years but not permitting renewal.
15. “Public recognition and confidence” are not measurable criteria for candidates for membership of ComCom and should be removed.

16. It is recommended that finance and engineering be added to the possible relevant educational backgrounds for candidates for ComCom. It is also recommended that it is clarified that the (at least) 10 years' work experience be in one of those relevant fields.
17. The government should not be the body that provides a list of candidates to the President, as that politicises the process.
18. A new procedure for appointment of members of ComCom must be devised to align with both CoE and AVMSD standards. The process of appointment must also take into account the need to retain a gender balance among ComCom membership.
19. The criteria and procedures for termination should be set out clearly in the Broadcasting Law and not in separate Regulations.
20. Members of the Commission should have their appointments terminated if they convicted of a serious offence, are absent from post, incapable of fulfilling their duties (for health reasons), or have conflicts of interest which are not resolved quickly. This should not be discretionary, or subject to a (political) vote in Parliament.
21. Registration on the Register of Debtors should be added to the reasons for termination of appointment.
22. The law should make clear that the conditions which create a conflict are absolute and not discretionary.
23. In Article 11.1.(c) the words "for payment" should be deleted.
24. Care must be taken to ensure that electronic communications companies are not subsidising the Commission's work relating to services regulated under this Law.
25. As good practice, the Commission should itself arrange an annual independent audit of its financial performance. This is particularly so given that all authorised persons and licence holders must have their accounts audited (see Article 70.4).
26. As good practice, to aid accountability and transparency, the Commission should add to the annual report its plan of activities for the coming year, and a report on its performance against the previous year's plan.
27. The law should make clear that complaints that are not dealt with by media services should in the first instance go to ComCom. They may be appealed to the court.
28. Details of the complaint handling procedure should either be set out in this law, or in a separate guidance note to make the process clear to the public and the regulated sector.
29. Article 14.7 that applies the complaints handling system to video sharing platforms is inappropriate and should be deleted.

Chapter IV

30. If the intention is to prevent broadcasters being owned by unknown/hidden beneficiaries, Article 37.2(f) should be changed (a) to make it clear that the prohibition is to offshore holdings with such characteristics; and (b) to include effective enforcement provisions.
31. ComCom should have the power to inquire and verify ownership arrangements.
32. Given the way the term is used in the Law, the definition of "broadcasting network" appears incorrect, as it should apply to the *programmes*, and not a document that describes the programmes.
33. In Article 39 the additional fee payable by previously sanctioned licensees to prolong their licence should be removed.

34. There should be a clear legal reference to the applicable technical and quality norms and standards. If they do not exist, then this provision (Article 45.12.(e)) should be deleted.
35. Article 45.14 should be amended to include a time period, for example, within 6 months of registration of the authorisation.
36. As suspension is a severe interference of freedom of expression, suspension for a mere administrative lapse may be disproportionate in the context of Article 10 of the European Convention on Human Rights. It would be far more proportionate to charge interest on late payments and only resort to suspension if payments have not been made for a considerable period (e.g.12 months).
37. Authorisations which have been suspended under article 45.14(c) should be recorded within three working days of receiving notification that the violation has been eradicated.
38. It is recommended that the law be amended to set out a system for video-sharing platforms that is separate from the licensing and authorisation regime in place for audiovisual media service providers.

Chapter IV⁽¹⁾

39. It is recommended that the requirement in Article 45⁽²⁾ that programmes be included in catalogues adapted to persons with disabilities be progressive rather than immediate.

Chapter IV⁽²⁾

40. Where the necessary steps for informing a media service provider of derogation from the country-of-origin principle are included in Article 45⁽³⁾, it is recommended a provision be included on how a media service provider will be able to respond to an allegation.

Chapter IV⁽³⁾

41. The Broadcasting Law should avoid requirements that amount to general monitoring obligations, such as “preventing transmission”, and instead in Article 45⁽⁴⁾ require video-sharing platforms to “take appropriate measures to protect...” minors and the general public.
42. Article 45⁽⁴⁾.2 should be amended to refer only to incitement to violence or hatred based on protected categories rather than “discrimination”.
43. It is recommended that the third point in Article 45⁽⁴⁾ be changed from a general reference to the Georgian Criminal Code to a specific reference to the three categories of illegal content listed in the AVMSD’s Article 28b.
44. Article 45⁽⁵⁾.2 should be revised to read: “Video-sharing platform providers shall take measures as provided for by this Law to ensure that audiovisual commercial communications that are not marketed, sold or arranged by them comply with the requirements under paragraph 3 of this article.”
45. To align with the purpose of the AVMSD and appropriately highlight the “level playing field” among services financed by advertising, Article 45⁽⁵⁾.3 should simply refer to the other provisions in the Broadcasting Law where the standards for commercial communication are covered and to the Law on Advertising rather than present a separate list of standards for video-sharing platforms.

46. The text of Article 45⁽⁶⁾ in the original language should be re-examined to ensure it is in line with Article 28b.3 of the AVMSD. Specifically, the phrase “as appropriate” should appear in the first line, the measure on systems for users to rate content should be included, the measure listed in line c) should be changed to refer specifically to Article 45⁽⁴⁾ as the source of concern about content, and the addition of “to assess the content” in point d) is confusing.
47. The text of Article 45⁽⁷⁾.2 should be changed from “determine the conditions and volume of measures to be taken” by the video-sharing platforms to “assess the appropriateness of the measures taken”.

Chapter VI

48. Article 51 needs to be revised to say “a majority part of its television time”.
49. The previous correction and rebuttal provisions in Article 52 before it was revised and the system for enforcing them were already largely in line with the AVMSD. It is therefore recommended that they be reinstated and only slightly amended to bring them closer to the Directive and international standards and that Article 52⁽¹⁾ be removed.
50. It is recommended that Article 51⁽²⁾ be revised to refer only to “audiovisual media services providers”.
51. Article 55⁽²⁾ should be amended to read, “It shall be prohibited to transmit programme *content* or advertisements that incite violence or hatred..., except, *exceptionally*, where this is necessary in the *context* of a programme”
52. To ensure clarity, Article 55⁽²⁾ should be amended to expressly state that critical and/or offensive speech is not to be considered hate speech.
53. Consideration is given to the initiative of hate speech regulation under an improved co-regulatory mechanism.
54. Article 56.4 should be amended to mirror the terms and restrictions contained in the Code of Conduct, namely: to prohibit advertisements that abuse a person’s dignity. Moreover, it shall restrict programmes that contain obscene behaviour and offensive language to times when children are unlikely to be seeing them. Only pornography should be limited to broadcast in encrypted form.
55. It would be preferable to change the wording in Article 56.5 to mirror the wording in AVMSD and the ECTT – “the physical, mental or moral development of minors” – or the wording in Article 56⁽¹⁾ - “the physical, psychological, intellectual and spiritual development of minors”.
56. Article 56⁽¹⁾.2 should be amended to say “moral” instead of “spiritual”.
57. The Broadcasting Law should include a provision to update the term “general broadcaster”, so that it is in line with the terminology used in the rest of the text (audiovisual media service and radio broadcaster) and be specific so that it is clear to which services those obligations apply.

Chapter VII

58. If the term “interdependent” does not have a clear legal meaning within Georgian jurisprudence, the full details of the restrictions should be set out.

Chapter VIII

59. It is recommended that Article 63 be further amended to include prohibitions aimed at preventing advertising prejudicial to dignity, health and safety.

Chapter IX

60. Video-sharing platforms should be taken out of the scope of Article 70 and the law amended to reflect a separate approach to assessing the appropriateness of measures taken by video-sharing platforms.
61. Article 71.1 should be amended in a way that prior sanctions, the warnings are issued for violations of Articles 56¹ and 56⁽²⁾. Article 71.4 should therefore be deleted.
62. Article 71.6 should be deleted.
63. It is recommended that Article 72.2 is deleted.
64. Care must be taken to comply with Article 10 ECHR before considering revocation of any licence.

5. PROPOSED IMPLEMENTATION ROADMAP

The Broadcasting Law was adopted without considering an initial CoE Opinion on the three major areas as requested. This full analysis therefore reflects the initial Opinion together with additional comments on the full Broadcasting Law as it is now. It is recommended that as such the Opinion is published and disseminated amongst stakeholders, particularly media companies and relevant civil society organisations with a view to further revision.

It is understood that the EU has postponed the deadline for aligning Georgian Law with EU AVMSD until late Spring 2023. There is therefore sufficient time for a thorough revision of the Broadcasting Law to ensure it protects freedom of expression and aligns with EU requirements, as well as Council of Europe standards.

A thorough and systematic process of consultation on revisions to the Broadcasting Law, as initially proposed by Parliament, needs to be put in place, with facilitated Roundtables and the opportunity for Stakeholders to request changes/corrections relevant for the industry. As part of this process, every opportunity should be given to consider proposals by broadcasters to set up a co-regulatory mechanism. It is understood that this proposal exists.

Furthermore, a Working Group of media lawyers, representatives from relevant CSOs, broadcasters and ComCom is important to be put in place in order to consider the responses to the consultation process and together draft amendments in line with the recommendations in this Opinion and the consultation responses. As part of this process, the Working Group should consider alternative means of appointment of the members of ComCom. A place to start would be to review the appointments process of members of the Regulatory Authority of countries that have recently joined the EU or have been granted candidate status, taking into account the regulatory independence requirements of Article 30 of the AVMSD and the Council of Europe's principles for media and communications governance set out in CM/Rec(2022)11.³⁴

The Working Group can also immediately begin to serve as the forum for the development of Guidance (and if required, By-Laws) from ComCom, for example: Guidance on complaints-handling procedure, application of sanctions, progressive application of accessibility requirements, etc as well as potential changes to the Code of Conduct. It is important that the development and use of Code(s) of Conduct are in line with the requirements of Art. 4a of the AVMSD and also with CoE Recommendation CM/Rec(2022)11.

Once the law is revised and an aligned version of the Broadcasting Law is passed, technical workshops should be considered with audiovisual media services holding authorisations, and with ComCom, to ensure that there is a common understanding of all new and amended provisions. Moreover, education programmes on hate speech should be carried out for all media companies (including print media).

If the right of reply is regulated directly by ComCom and not by a new co-regulatory mechanism, the members of ComCom should be considered to undergo through training on the *right of reply*, with

³⁴ [Recommendation](#) CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance.

particular emphasis on protecting *freedom of expression and editorial integrity*. It would also be helpful to hold seminars for media companies on the exercise of the right of reply, and how this can be incorporated into programme-making.

It is recommended that ComCom prepares and publishes the guidance on how it handles complaints.

Importance should be given to the provision of programmes on supporting the independence and training of the judiciary, especially on issues affecting freedom of expression. This would include specific content areas (hate speech, right of reply), as well as proportionality of sanctions within the context of Article 10 ECHR.

APPENDIX 1: INTERNATIONAL STANDARDS

The analysis is provided from the perspective of the following standard-setting documents of the Council of Europe:

- Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on **combating hate speech**
- Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on **principles for media and communication governance**
- Recommendation 2168(2020) of the Parliamentary Assembly on **threats to media freedom and journalists' security in Europe**;
- Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States
- on the **roles and responsibilities of internet intermediaries**
- Appendix to Recommendation CM/Rec(2018)2 **Guidelines for States on actions to be taken vis-à-vis internet intermediaries** with due regard to their roles and responsibilities
- Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on **media pluralism and transparency of media ownership**;
- Recommendation 2111(2017) of the Parliamentary Assembly on **political influence over independent media and journalists**;
- Resolution 2179(2017) of the Parliamentary Assembly on **political influence over independent media and journalists**;
- Recommendation CM/Rec(2016)5 of the Committee of Ministers to member states on **internet freedom**;
- Recommendation CM/Rec(2016)4 of the Committee of Ministers to member states on the **protection of journalism and safety of journalists** and other media actors; ▪ Recommendation CM/Rec(2015)6 of the Committee of Ministers to member states on the free, **transboundary flow of information on the Internet**;
- Recommendation 2075(2015) of the Parliamentary Assembly on **media responsibility and ethics** in a changing media environment;
- Resolution 2066(2015) of the Parliamentary Assembly on media responsibility and ethics **in a changing media environment**;
- Resolution 2035(2015) of the Parliamentary Assembly on the protection of the **safety of journalists and of media freedom** in Europe;
- Recommendation 1998(2012) of the Parliamentary Assembly on the protection of freedom of expression and information on the Internet and online media; ▪ Resolution 1877(2012) of the Parliamentary Assembly on the protection of **freedom of expression and information on the Internet and online media**;
- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on **a new notion of media**;
- Recommendation 1897(2010) of the Parliamentary Assembly on respect **for media freedom**;
- Recommendation 1855(2009) of the Parliamentary Assembly on the **regulation of audio-visual media services**;

- Recommendation CM/Rec(2009)5 of the Committee of Ministers to member states on **measures to protect children against harmful content and behaviour** and to promote their active participation in the new information and communications environment;
- Declaration of the Committee of Ministers on the role of **community media in promoting social cohesion and intercultural dialogue** (11 February 2009);
- Declaration of the Committee of Ministers on the independence and functions of regulatory **authorities for the broadcasting sector** (26 March 2008);
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning **media coverage of election campaigns**;
- Recommendation CM/Rec(2007)11 of the Committee of Ministers to member states on promoting **freedom of expression and information in the new information** and communications environment;
- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on **media pluralism and diversity** of media content;
- Declaration of the Committee of Ministers on protecting the **role of the media** in democracy in the context of media concentration (31 January 2007); ▪ Declaration of the Committee of Ministers on freedom of **political debate in the media** (12 February 2004);
- Recommendation 1589(2003) of the Parliamentary Assembly on **freedom of expression in the media** in Europe;
- Recommendation Rec(2000)23 of the Committee of Ministers to member states on “The Independence and Functions of Regulatory Authorities for the **Broadcasting Sector**”
- Recommendation No. R(99)1 of the Committee of Ministers on measures to promote **media pluralism**