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“Safeguarding Freedom of Expression and Freedom of Media in Ukraine” (SFEM-UA)

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LEGAL OPINION

On the Draft Law of Ukraine
“On Amendments to Certain Laws on Media Activity”

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values](#).

Funded within the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” 2023-2026, the Project “[Safeguarding Freedom of Expression and Freedom of Media in Ukraine](#)” aims to address urgent needs of major stakeholders and media players in the country. The Project’s objective is “Enabling a pluralistic media environment in Ukraine through harmonisation of legal and policy frameworks in line with European standards” and it is built around three main components:

- (1) Alignment of Ukraine’s framework on media, freedom of expression and freedom of access to information with the European standards;
- (2) Effective implementation of the legal framework governing the protection of journalists, public broadcasting and regulatory authority in line with European standards;
- (3) Effective and efficient communication strategies governing a balanced media coverage and preventing information disorder.

Prepared within the Project “Safeguarding Freedom of Expression and Freedom of Media in Ukraine” by Tanja Kersevan and Deidre Kevin, Council of Europe Consultants.

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1 LIST OF ABBREVIATIONS

AVMSD	Audiovisual Media Services Directive
AVMS	Audiovisual Media Services
CoE	Council of Europe
COM	Committee of Ministers (of the Council of Europe)
CSO	Civil Society Organisation
DSA	Digital Services Act
DTT	Digital Terrestrial Television
EBMS	European Board for Media Services
ECTT	European Convention on Transfrontier Television
EC	European Commission
EMFA	European Media Freedom Act
EPRA	European Platform of Regulatory Authorities
ERGA	European Regulators Group for Audiovisual
EU	European Union
HFSS	High in fat, trans-fatty acids, salt or sodium and sugars (foods)
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
UGC	User-generated content
VLOPs	Very large online platforms
VOD	Video-on-demand
VSPS	Video-sharing platform service

2 INTRODUCTION

This Opinion was requested on 31 October 2024 by Mykyta Poturaiev, the Chair of the Committee on Humanitarian and Information Policy, Parliament of Ukraine, “to carry out an expert examination of the Draft Law “On Amendments to Certain Laws on Media Activity”, Register No. 12111 of 10.10.2024, for its compliance with the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on audiovisual media services, as amended by Directive (EU) 2018/1808 of 14 November 2018, and the requirements of the European Union”.

It was prepared by the Council of Europe [Division for Co-operation on Freedom of Expression](#) within the Project [“Safeguarding Freedom of Expression and Freedom of Media in Ukraine”](#), in cooperation with the Council of Europe consultants Deirdre Kevin and Tanja Kerševan.

3 EXECUTIVE SUMMARY

This Opinion provides a review of the Draft Law of Ukraine ‘On Amendments to Certain Laws on Media Activity’, which comprises a set of proposed amendments to the Law ‘On Media’ and a range of related Laws. According to the Explanatory Note provided and also discussions with experts who drafted the amendments, it is clear that a majority of the changes are technical in nature and emerge from 18 months of experience in implementing the new Law ‘On media’ and the broader legal framework. These changes have been analysed with reference to their context in the Law and are all addressed in this review. It has been noted that many changes are aimed at enhancing the clarity of the provisions while some involve a re-organisation of provisions to ensure more clarity and the avoidance of repetitions.

A range of changes are made related to issues such as Licensing and the Register of Media Entities and these appear to focus mainly on processes and procedures (addressed in more detail below). Changes in relation to the Register are also linked to the issue of Transparency of Media Ownership structures (also addressed below).

Other minor changes proposed to the Law ‘On Media’ are discussed under Section 5. With regard to the Scope of the Law and Jurisdiction, it is highly recommended to place more emphasis on the importance of bi-lateral and European cooperation both in relation to jurisdiction and derogations from freedom of reception and retransmission, and also with regard to the tasks of the National Council. In particular, the procedures for formal cooperation between regulators which have been enhanced by the European Media Freedom Act (EMFA) and will be implemented by the future European Board for Media Services (EBMS) should be taken into account. It is recommended that the engagement and cooperation with the EBMS by the National Council as a future permanent observer are reflected in the Law ‘On Media’.

In relation to prohibited content, the proposed amendments adjust the phrase related to incitement to hatred and replaces the term ‘cruelty’ with ‘violence’. This is more closely aligned with the definition of hate speech from Council of Europe standards. Similar changes are made throughout the Law wherever relevant and also in other Laws such as the Law ‘On the Ukrainian Referendum’ and the Law ‘On Cinematography’. The attention to detail here is important as the drafting of the proposed amendments has ensured a consistency of terminology and definitions across the relevant suite of legislation.

As a key institution in the protection and promotion of media pluralism, the national media regulatory authority must be independent, properly funded and have sufficient powers and remit to implement the legal framework (in line with Council of Europe standards and EU Law). The proposed amendments would strengthen the Council’s functional and institutional autonomy by expanding the list of entities prohibited from interfering with its activities (e.g., political parties) and introducing additional legal guarantees for its independence. The removal of the requirement for state registration of the Council’s legal acts by the Ministry of Justice (via changes to the Law ‘On Law-Making’) further streamlines NRA’s operations, enabling it to function more efficiently and with enhanced independence. Additionally, provisions for adequate financial and human resources are introduced to address the Council’s limited capacity to exercise its powers. These amendments are a positive development, provided they are implemented effectively and do not remain merely declaratory (see details under section 6.1).

In relation to the need for ‘adequate financial and human resources’, a new provision places obligations on the State to ensure both the independence and the adequate financial conditions of the National Council. Related to this is the introduction of a guarantee of fixed salaries of civil servants in the National Council for the duration of the period of the legal regime of martial law in Ukraine.

Procedural reforms include the simplification of administrative processes. Detailed requirements for refusal resolutions have been removed, and communication with media entities will rely primarily on electronic accounts, with paper copies available upon request. These measures appear designed to simplify procedures, reduce administrative burdens and modernise processes. However, they also raise concerns about transparency and accountability, necessitating careful implementation to ensure decisions remain well-motivated and clearly communicated.

The amendments introduce updates to licensing, registration, and compliance mechanisms. Licensing procedures have been reorganised to prioritise the goals set by the National Council's strategic plans. The registration framework has been refined to enhance transparency, with stricter timelines and additional requirements for media entities to maintain accurate records in the media register. New provisions allow the National Council to revoke registrations based on violations, including those related to ownership structure or prohibited content. It is important to note that such measures should be implemented with caution, accompanied by robust safeguards, and applied in a fair and judicious manner.

Several of the deadlines and timelines for action by the National Council and for completion of procedures have been extended. It can be assumed that these changes reflect the reality of time needed for these procedures following the 18-month experience of implementing the Law 'On Media'.

A further important provision is introduced that clarifies that only media entities entered in the Register can avail of state grants and other types of state support. This serves to encourage media entities to be registered and ensures transparency regarding who is receiving public money.

Regarding the Transparency of Media Ownership, the Law already aligns well with Council of Europe standards and the requirements under the Audiovisual Media Services Directive. The amendments introduce a couple of changes aimed at enhancing transparency and strengthening the powers of the National Council to investigate ownership structures. These changes are rational and should improve the knowledge regarding investments and interests in the various media entities.

The requirements on ownership transparency is adjusted with regard to identifying key members in media entities' ownership structures. Data on all key members will only be required where there are no persons with direct and/or indirect substantial interest in the media entity or a possibility of considerable or determinant impact upon management and/or operation of the media entity. This somewhat reduces the burden of data provision but still ensures in all cases that there is a transparency including where there is no dominant owner.

Reforms to the co-regulatory regime emphasise greater inclusivity and professional engagement. The criteria for establishing co-regulatory authorities have been refined. The amendments also expand the scope of co-regulation to include responsible use of artificial intelligence in the media industry, reflecting evolving technological challenges.

In the context of the ongoing armed aggression, the amendments include specific provisions to address war-related challenges. These include restrictions on the activities of foreign linear media, enhanced content regulations to combat hate speech, and additional safeguards to prevent media operations by entities linked to the aggressor state. The provisions also ensure continuity of funding and remuneration for the National Council during martial law, with a framework for transitioning back to normal governance procedures once the crisis ends.

The amendments further enhance the governance of public and local media. For the Public Broadcasting Company of Ukraine, the changes formalise processes for determining broadcasting coverage and emphasise the promotion of indigenous languages and cultures.

Supervisory boards for local public audiovisual media entities are made more inclusive, with reduced thresholds for participation and clearer rules to prevent conflicts of interest.

Overall, the amendments represent a comprehensive step toward strengthening Ukraine's media governance (i.e., regulatory and co-regulatory) framework. They address pressing issues of regulatory independence, ownership transparency, and procedural efficiency while introducing safeguards to support media entities during times of crisis. Successful implementation, however, will require careful attention to ensure that procedural simplifications do not compromise transparency or accountability, and that the regulatory authorities are equipped with the necessary resources to fulfil their expanded roles.

4 GENERAL COMMENTS

The review of the Draft Law 'On Amendments to Certain Laws on Media Activity' is based on the international law and standards on freedom of expression and media freedom, notably Council of Europe standards in the field, as well as the EU audiovisual and digital framework.

This expert opinion refers to the following (non-exhaustive) list of relevant international law and standards. A broad range of relevant Council of Europe standards are referenced:

Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

European Convention on Transfrontier Television (ECTT)

Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech.

Recommendation CM/Rec(2022)11 on principles for media and communication governance

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 26 March 2008.

Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector.

Audiovisual Media Services Directive (AVMSD)

European Media Freedom Act (EMFA)

Regulation on the Transparency and Targeting of Political Advertising (RPA)

Given that commercial communications, a key component of the AVMSD, are regulated under the Law on Advertising - which is currently under revision and was not included in this review - this expert opinion is limited in its assessment of the Ukrainian law's compliance with AVMSD requirements.

The proposed amendments to Ukraine's media law are mostly addressing technical issues that appeared during the implementation of the Law on Media. Most of them are aligned with Council of Europe and EU standards. However, key areas such as regulatory independence, proportionality of restrictions, and streamlined procedures represent a potential area of concern and further refinement to ensure that the law supports Ukraine's EU integration process while safeguarding media freedom and pluralism.

The following provides an overview of Minor changes to the Laws, more Substantial changes to the Law and an Analytical Summary of changes related to Key Areas of Media Legislation.

Unless otherwise stated, references to article numbers refer to the Law 'On Media'.

5 AMENDMENTS TO THE LAW ‘ON MEDIA’ AND RELATED LAWS

The first section provides comments to the amendments of the Law of Ukraine ‘On Media’ (Bulletin of the Verkhovna Rada, 2023, No. 47-50, Article 120). Reference to the other related Laws will be included here when relevant to, and linked to, changes in the Law ‘On Media’. Otherwise, specific proposed provisions in the other Laws will be addressed separately.

5.1 Minor changes to the Law ‘On Media’

5.1.1 Definition of confidential information (Article 1)

The amendment under Article 1 (5) updates the definition for data representing ‘confidential information’ to include ‘postal addresses’, aligning with data protection requirements. The change is primarily technical in nature and does not introduce substantive alterations or shifts in policy.

5.1.2 References to data information and documentation throughout the Law

A range of provisions concerning contact details have also been amended to include ‘postal address’. These relate to: Licence competitions and the submission of documents (Article 52); several relate to the Media Register (Article 60, Article 63). These changes are also technical in nature and ensures that information is available on the seat of the media entities.

5.1.3 Scope of the Law and jurisdiction (Article 2)

The proposed amendment clarifies that the qualification of an audiovisual, print, online media services and services of audiovisual service providers as a service that targets the territory and audience of Ukraine will be prescribed by the corresponding resolution of the National Council adopted upon request of a natural and/or legal person(s) or at its own initiative. The change implies that the National Council will publish a resolution reasoning its decision based on the criteria for assessing whether a service targets Ukraine.

It might also be useful in this context to recognise the importance of bi-lateral and pan-European cooperation in this area. Reference is made to the European Convention on Transfrontier Television. At the same time the provisions on jurisdiction are inspired by the Audiovisual Media Services Directive.

Account should be taken here of the European Media Freedom Act (EMFA), which introduces a range of procedures for formal cooperation between regulators. One of these procedures concerns a formal procedure for coordination regarding problematic foreign media services (from outside the EU). This will take place in the context of the future European Board for Media Services (EBMS) which will replace the current European Regulators Group for Audiovisual (ERGA). Ukraine, as a candidate country, is a permanent observer at the ERGA and this will likely also be the case at the EBMS meetings.

It is recommended to introduce an additional paragraph here regarding cooperation through these bodies and sharing of information. Alternatively this could be added to Article 90 (Powers of the National Council) paragraph 40.

5.1.4 Media Legislation (Article 3)

The amendment clarifies that amendments to the Law of Ukraine ‘On Media’ shall only be made by laws on amending the Law On Media’. This is linked to changes in the Law on Law making (see below under 6.1.2). The change is primarily technical in nature and does not introduce substantive alterations or shifts in policy.

5.1.5 Changes to the list of eligible media entities

Article 15 is adjusted to include the category ‘individual entrepreneurs’ as potential printed media entities. The same is the case with online media entities (Article 16) and audiovisual media entities (Article 21). In addition, each of these articles also extend the group of entities who are not allowed to be printed media entities by including ‘other voluntary unions of public authorities or local self-government bodies’. The changes are minor and do not represent any significant change to the Law.

5.1.6 Strengthening requirements for various Media entities

The proposed amendment under Article 22 further strengthens obligations for audiovisual media service providers regarding the access to information on their users. The change should strengthen the transparency regarding audiences and users of the services.

Regarding requirements for Providers of Electronic Communication Services for Broadcasting Needs by Means of the Radio Frequency Spectrum (Article 24), some amendments are proposed. Article 24 now requires that the relevant agreement between the Provider and the audiovisual media entity should be concluded *before the date of actual commencement of broadcasting*. This is a typical approach in European countries, which helps to ensure that a licensed service will actually be distributed upon launch.¹

5.1.7 Reorganisation of several Articles.

In addition, the detail in several Articles has been reorganised to ensure clarity and avoid unnecessary repetition. Examples include changes under Article 42 for the Protection of Minors in relation to the Viewer Index. Such changes require no commentary in this Opinion.

5.2 Other more substantial changes to the Law ‘On Media’

5.2.1 Restricted content in relation to incitement to hatred or violence

Article 36 addresses restricted content. It replaces the term ‘cruelty’ with ‘violence’. This is more closely aligned with definitions of hate speech from Council of Europe standards² and Article 6 of the AVMS Directive. In addition, ‘violence’ is a broader term than ‘cruelty’, while cruelty is a type of violence. This change is reflected throughout the amendments including in the section on violations. It is also reflected in other laws adjusted via these amendments (for example in the Law “On the Ukrainian Referendum”, see 6.11).

5.2.2 Final and Transitional Provisions

The transitional and final provisions of the law introduce measures aimed at supporting the implementation. They clarify certain procedural and operational issues (e.g. paragraphs 11-1, 12, 38), adjust deadlines (e.g. paragraph 30), but they also extend into regulatory areas (e.g. paragraphs 18 and 25¹).

The provisions clarify the procedures to be followed by the National Council and media entities during the transition to the new regulatory framework. For instance, the memorial days are regulated by the old broadcasting rules until the new are developed and approved (paragraphs 1-11); the National Council is tasked with sending resolutions and notices via traditional and

¹ Mapping of licensing systems for audiovisual media services in EU-28, European Audiovisual Observatory, Strasbourg, 2018: <https://rm.coe.int/licensing-mapping-final-report/16808d3c6f>

² Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers). Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955

electronic means until the electronic account system is operational, after which licensees and registrants will gain full access to information (paragraph 12); the deadline for audiovisual entities to comply with the requirement of registering films in the State Register of Films is extended to three years (paragraph 30); and there is a provision regarding the obligation of informing the National Council on the finished reform of communal television and radio organisations into local public audiovisual media (paragraph 38).

More substantial provisions are the ones setting the regime of aligning the ‘old’ licenses with the new law (paragraph 18) and provisions addressing remuneration of the National Council members and employees (paragraph 25¹).

For licenses issued prior to the enactment of the Law, the terms are adjusted to align with the new requirements, including obligations related to programme content such as quotas for songs in EU languages. Licensees are required to update their licenses within two years, and entities transitioning to the new registration framework must complete the process within specified timelines. The penalty for non-compliance is removal from the register.

The provision on remuneration of the National Council members and civil servants during martial law introduces a specific salary structure tied to the subsistence minimum. This ensures stability in governance and administrative functions during the ongoing state of martial law while providing a framework for returning to general procedures after its termination.

5.3 Minor changes to other related laws

Minor adjustments are made to the Law of Ukraine ‘On Cinematography’. For example, under Article 15, which addresses film distribution and exhibition, the section on incitement to hatred and violence is updated in line with the changes outlined above (5.2.1).

5.4 Substantial changes to other related laws

5.4.1 Changes to the Law on ‘On the State Support of Media, Guarantees of Professional Activity and Social Protection of a Journalist’

This Law which entered into force in 1998 regulates ‘all forms of governmental subsidies, economic support for the mass media and social protection of the journalists in Ukraine.’

The proposed amendments introduce an important range of supports for certain media during the legal regime of martial law and post-war economic recovery.

State support shall be granted to the media entities set out in Part 1 of this Article in order to ensure their stable operations during the legal regime of martial law and post-war economic recovery. State support shall be granted to media entities to: ensure stable operations of media entities by creating and distributing socially important information products; recover and/or purchase television, telecommunication and other equipment used to create information products; create favourable conditions for stable operations of printed media entities by procuring printing services and paper; carry out reconstruction and/or overhaul of buildings (parts thereof) of media entities.

The proposed amendments also updated the clause in relation to situations where state support will be either terminated or not granted in the first place:

State support shall not be granted and shall be terminated if it has been granted in case it is established by court that the respective media entity, its ultimate beneficial owner, key member or major shareholder has committed a crime in the field of national security and violation of equal rights of citizens.

State support may only be resumed in at least a year following the termination of such state support.

This is also a reasonable addition to criteria for refusing or terminating state support, which rationally would not be provided to entities linked to, owned, or run by individuals with a criminal conviction.

5.5 Other references to related laws in this Opinion

Changes to other relevant laws are dealt with in the following sections:

The Law on Social Media is covered under section 6.10 in relation to the Public Broadcasting Company;

The Law of Ukraine ‘On the Authorisation System in the Field of Economic Operations’ is included under 6.1.2 in relation to licensing of media;

The Law ‘On Electronic Communications’ and the Law of Ukraine ‘On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and the Provision of Postal Services’ under section 6.1.7 in relation to powers of National Council and the Communications Regulator;

6 KEY AREAS ADDRESSED IN THE LAW 'ON MEDIA' AND RELATED LAWS

6.1 Independence of the National Council

6.1.1 Independence from other bodies and prohibition of interference

Article 72 (1) enhances the independence of the National Council by extending the list of bodies in relation to which the Council is independent. These include: 'enterprises, institutions and organisations of any ownership form and their officers and officials'.

In addition, Article 72 (5) has added 'political parties and public associations, enterprises, institutions and organisations of any ownership form and their officers and officials' under the prohibition of interference in the work of the Council. The inclusion of political parties here is extremely important for the proper functioning of independence and the change is highly commended.

6.1.2 Functional independence and powers to implement the law

Several changes to the Law of Ukraine 'On Law Making' should strengthen the independence of the regulator, in particular in relation to the elaboration of statutory acts and regulations. Under the Scope of the Law (Article 1) it is stated that the Act will not apply to the legal Acts of the National Council of Ukraine on Television and Radio Broadcasting. The Law previously stated (under Section XIV. Final Provisions) that:

6. Legal and regulatory acts of the National Council shall be subject to state registration by the Ministry of Justice and included into the Unified State Register of Laws and Regulations. The National Council shall keep records on all the legal and regulatory acts it has adopted and ensure free and unhindered access thereto on its official website. The legal and normative acts of the National Council that have passed state registration shall enter into force on the day of publication thereof unless otherwise prescribed by the acts themselves, but in any case only after they are published.

This provision has been removed and this should enhance the efficiency of the regulator in elaborating and implementing the necessary secondary acts for enforcing the law. It also ensures better alignment of the legislative framework with key Council of Europe standards such as the 2000 Recommendation, which emphasised that Member States should:

'include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner ..'³

The proposed amendment will also ensure that the Law better aligns with Article 30 of the Audiovisual Media Services Directive (AVMSD) in relation to functional independence.

1. Each Member State shall designate one or more national regulatory authorities, bodies, or both. Member States shall ensure that they are legally distinct from the government and functionally independent of their respective governments and of any other public or private body. This shall be without

³ Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector. <https://rm.coe.int/16804e0322.See>

prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

In order to ensure legal clarity and consistency, several other Laws needed to be amended in relation to this change: the Law of Ukraine ‘On the Authorisation System in the Field of Economic Operations’ was amended under the Scope (Article 2) to establish that it does not apply to authorisation systems covering television and radio broadcasting, the media field, and other specified areas; the Law of Ukraine ‘On the Administrative Procedure’ is also updated under the Subject and Scope (Article 1) to state that public administration, regulation, and supervision in the media field are excluded from the scope.

6.1.3 Financial resources

Further to the AVMSD, under Article 30 (4), it is required that Member States ensure that:

4. .. national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively...

In its report on Ukraine (2024), the European Commission expressed concern that even though the powers of the National Council of Ukraine on Television and Radio Broadcasting had been expanded, the Council has limited resources and capacities to exercise them.⁴

A new clause is added in the proposed amendments (under Article 72.1), which states that:

The state shall ensure legal, organisational and functional independence of the National Council from the system of executive authorities and any other public authorities as well as adequate financial conditions that will enable the National Council to exercise its powers efficiently.

This is a commendable addition that can strengthen the regulatory framework, provided it is implemented effectively and does not remain purely declaratory, ensuring that the National Council is equipped with the necessary resources and institutional independence to fulfil its mandate in practice.

It has been also noted that amendments under Section X. Final and Transitional Provisions outline the framework for funding and remuneration of members and civil servants of the National Council of Ukraine during martial law, with specific provisions ensuring clarity and predictability in compensation despite extraordinary circumstances.

In addition, the text explicitly states that the remuneration and funding will revert to the general procedure upon the cancellation or termination of martial law. This provision ensures a return to normalcy and alignment with the standard legal framework:

After martial law is cancelled or terminated in Ukraine, funding and labour remuneration of members and civil servants of the National Council shall be

⁴ COMMISSION STAFF WORKING DOCUMENT- Ukraine 2024 Report - Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS. 2024 Communication on EU enlargement policy. https://neighbourhood-enlargement.ec.europa.eu/document/download/1924a044-b30f-48a2-99c1-50edeac14da1_en?filename=Ukraine%20Report%202024.pdf

carried out in accordance with the general procedure set by this Law, the legislation on civil service and labour remuneration.

6.1.4 Governance – appointment (and dismissal) of the Members of the National Audiovisual Council

The amendments to the appointment of members of the National Council by the Verkhovna Rada of Ukraine as defined in Article 76 primarily aim to streamline the appointment process, enhance transparency, and align procedures with established Council of Europe standards and EU legislation.⁵ Article 76 is changed to regulate only appointment and not dismissal as it is the case of the current law. The revised text of paragraph 3 (now 2) emphasises that all new appointments must result from competitive selection. By institutionalising competitive procedures and explicitly referencing selection for all expiring or terminated positions within a fixed time frame the law potentially reinforces merit-based appointments and aims to avoid the delays that occurred in the past. The new provisions specify that appointments must occur within three months of either the expiration of the term or early termination of a member's powers. This introduces clear deadlines, promoting timely action by the Verkhovna Rada (paragraph 2), which could be still challenging to achieve in cases of political deadlock or lack of consensus.

For cases where multiple positions expire simultaneously, the law now mandates concurrent selection for all offices (paragraph 3). This ensures a coordinated process, potentially reducing delays in filling vacancies and maintaining the functionality of the Council. A new provision also outlines that if a new member is appointed before a resolution on their predecessor's dismissal is adopted, the new member's powers begin on the next business day after the resolution's adoption or entry into force (paragraph 2). This clarification helps prevent procedural ambiguities or overlaps in membership.

As for the appointment of members of the National Council by the President of Ukraine (Article 77), the amendments are similar in nature to those seen in Article 76, focusing on a selection process with clear terms, conditions and time frames for the selection, as well as procedures, but tailored to reflect the President's role in the process.

The amendments to Article 80 which currently governs early termination of powers of members of the National Council introduce significant changes and additional procedural steps for the termination of powers of National Council members. The article title is revised from 'Early Termination of Powers' to 'Termination of Powers and Dismissal of a Member of the National Council', signalling an expanded focus that covers both regular and early dismissal processes.

A new provision is added (Paragraph 1) specifying that the Verkhovna Rada must make decisions on dismissals via an open vote and:

by a majority of votes of people's deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine.

A new paragraph 2 introduces a requirement for dismissals at the end of a member's term to be approved during an ordinary plenary session before the term's expiration. This ensures continuity and avoids gaps or delays in representation.

There are no substantive changes to the grounds for early termination, which are now outlined in paragraph 1 and, following the insertion of two additional paragraphs, will appear in paragraph 3. The amendments emphasise that these grounds remain strictly limited and must be explicitly

⁵ For example, the Committee of Ministers Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector. Also the Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 26 March 2008. Also Article 30 of the Audiovisual Media Services Directive.

justified within the framework of the law. The same applies to the amendments presented in paragraphs 4, 5 and 6. These amendments provide clearer roles for both the appointing entity and the National Council itself. Decisions for dismissal based on voluntary resignation or term expiration are to be made solely by the appointing entity (paragraph 4). Dismissals based on specific violations or incapacity require recommendations from the National Council and can be challenged in court (paragraph 5). In cases of judicial involvement (e.g., violations of laws), the court plays a decisive role in approving dismissal requests (paragraph 6). Paragraphs 5 and 6 of the original version are removed as a result of the new wordings already explained above.

6.1.5 Governance – Chairperson of the National Audiovisual Council (Articles 81)

The amendment of paragraph 6 is to ensure continuity and stability in the leadership and functioning of the National Council. It establishes a clear hierarchy of succession for the performance of the chairperson's duties in the cases of their absence or incapacity. By specifying that the first deputy chairperson or the deputy chairperson shall assume the role, and further delegating this responsibility to a member of the National Council in accordance with its Rules of Procedure if neither deputy is available, the amendment prevents potential disruptions in the Council's operations. This formalised process aims to provide legal clarity and organisational consistency.

6.1.6 Reporting and Access to Information of the National Council (Article 88)

The amendment enhances transparency by requiring public reporting on other funding received by the National Council apart from the already present requirement to report on budgetary funds and funds received as fees for licences.

6.1.7 National Council Acts and Powers (Articles 87 and 90)

Regarding Acts of the National Council, the amendment under Article 87 streamlines procedures by removing the detailed requirements for refusal resolutions, such as justifications and legal reasoning, potentially reducing administrative burden but also limiting transparency. Communication with media entities will now primarily rely on electronic accounts, with paper copies available upon request, aiming to modernise processes and improve efficiency. However, these changes could raise concerns about the clarity and accountability of decision-making. It is essential that this simplification of procedures is applied in a way that does not compromise the level of detail provided to the subjects of regulation. Decisions should remain well-motivated and clearly explained to ensure transparency and maintain trust.⁶

The amendment to Article 90 updates the Council's powers as regards oversight and compliance mechanisms.

Other changes to the tasks and powers of the National Council include the transfer of some powers to the Communication Service Regulator. Under Article 10 of the Law 'On Media' (Creating and Developing Broadcasting Channels and Air Multichannel Electronic Communication Networks), the task of determining the coverage area of the broadcasting channel or the air multichannel electronic communication network has been transferred from the Audiovisual Council to the Communication Service Regulator.

This is also reflected in the proposed amendments to the Law 'On Electronic Communications' Article 45 (10) adding this competence to the Communication Service Regulator. In addition, the change is reflected in the proposed amendments to the Law of Ukraine 'On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and the Provision of Postal Services.' Here, the tasks of the Communication Service Regulator

⁶ Recommendation CM/Rec(2022)11 on principles for media and communication governance.

include the possibility to develop and approve rules of procedure related to its obligations under among others the Law on Media (Article 4.1). The specific task of determining the coverage area of the broadcasting channel or the air multichannel electronic communication network is also mentioned under Article 4.

6.2 Supervision, compliance and inspection

The amendment to Article 97 regarding the ‘supervision and control over legal compliance in the field of media’ establishes additional criteria for ‘official monitoring’ by the National Council, likely referring to ex officio supervision initiated and conducted independently by the Council under its legal authority. It mandates that violations be recorded at least three times within a defined period, with monitoring extending over a minimum of 24 hours and covering both the initial and final days of the period. This measure seems designed to ensure a robust evidentiary basis for potential compliance and enforcement actions.

The amendment of Article 100 extends the timeframe for adopting a resolution to issue an order in response to minor violations from 30 to 60 days following the detection of the violation, thereby allowing for a longer deliberation period.

The deadline for payment of the fine is however reduced from 60 to 45 days (Article 101).

The amendment of Article 101 further specifies the locations of conducting inspections, which adds to clarity.

6.3 Liabilities of media entities

It should be noted that the English translation of the Law ‘On Media’ speaks of ‘responsibilities’, while the English version of the proposed amendments speaks of ‘liabilities’. It is recommended to align the language in the documents.

6.3.1 Liability of Media Entities (Articles 110, 111, 112, 113, 114, 115)

For all media entities (Audiovisual, Printed Media, Online media entities), the provisions on gross violations regarding incitement to hatred have been updated to reflect the new phrasing of ‘inciting hatred, enmity or violence,’ in line with the proposed change to Article 36 (see 5.2.1 above).

Regarding Audiovisual Media Entities, Article 110 defines the responsibilities and potential liabilities for breaches of media law. This includes minor violations. Specifically, it adjusts Article 110 (3) with regard to inconsistencies in the data entered in the media register. Article 110 (13) introduces a more strict measure regarding failure to use the broadcasting type and/or technology specified in the Register over a time period – reducing this from three months to one month.

For major violations, failure to broadcast by means of the radio frequency spectrum over a time period is also more strict – reducing this from 14 days to 7.

For Printed Media Entities, changes have been made to Article 111. The amendment adjusts the language of Article 111 (2.2) which outlines the failure to file an application for amendments in the Register as a violation. A violation can now also include failure to file a statement of inconsistency of data in the Register entered by the registered entity into the Register on its own.

This reflects changes to the procedures relevant to the Register as outlined under 6.6.6-6.6.9 below. Article 111 (3.8) removes the phrase ‘specialised printed media for the adult audience’ and replaces it with ‘specialised printed media.’ Hence the meaning of ‘specialised media’ is unclear and the proposed amendment also seems to be incomplete.

Under article 111 a new clause (4.9) again refers to ‘specialised media’ whereby it is a gross violation to violate the requirements for specialised print media. In a new clause 4.10, a further gross violation is the carrying out of operations that may only be carried out on the basis of registration (mandatory registration) in accordance with this Law, without being registered.

For Online Media entities, the proposed amendment adjusts the language of Article 112 (2.1) whereby failure to file an application for amendments in the Register. A violation can now also include failure to file an statement of inconsistency of data in the Register entered by the registered entity into the Register on its own.

For Audiovisual Media Service Providers, the proposed amendment adjusts the language of Article 113 (2.1) in relation to inconsistency of data in the Register entered by the registered entity into the Register on its own (as with other media entities). The same change has been made in relation to Video-Sharing Platforms (Article 114 (1.3)), and to the liabilities of Providers of Electronic Communication Services for Broadcasting needs by means of the Radio Frequency Spectrum (Article 115 (2.3))

6.3.2 Applying Penalties (Article 116)

When applying temporary bans on the distribution of online media, the Communication Service Regulator may also inform providers by posting on the official website of the Communication Service Regulator (Article 116 (18)). The electronic communication service providers have been given more time to respond to information on such bans – an increase to five days from three.

A new clause is entered (Article 116 (20)) in relation to any registered media entity that has failed to follow five orders issued by the National Council for inconsistency of the data in the Register which the registrant enters into the Register on its own (over a period of 6 months). In this case the National Council shall resolve to revoke registration of such an entity.

6.4 Information and other restrictions in connection with the Armed Aggression

6.4.1 Information Content Restrictions in Media in Connection with the Armed Aggression (Article 119)

Changes to Article 119 (1 and 2) updates restricted information with the phrase ‘incitement of enmity, hatred or violence’ in line with the proposed change to Article 36 (see 5.2.1 above).

6.4.2 Restrictions on the Media Ownership Structure and Funding During the Armed Aggression (Article 120)

It is proposed that Article 120 contain an additional clause regarding what disqualifies the existence of a media entity in Ukraine.

5) the person whose medium has been found to have attributes of editorial control by the persons specified in Clause 14 hereof.

As highlighted above (6.4.2.) it is assumed that the intention here is to refer to Clause 1 (4). Clause 1(4) refers to:

4) a legal entity that receives funding (credits, loans, borrowings, investments, sponsors' contributions, charitable contributions, other financial assistance) from individuals who are citizens of the aggressor state (occupying state), legal entities registered in such state or located in such state.

The proposed amendment therefore introduces a new criterion – where the media entity ‘has been found to have attributes of editorial control’ by one of the persons specified under Clause

1 (4). This may be considered a rather vague criteria where it could be difficult to provide a reasoned justification and sufficient evidence.

6.4.3 Article 121. Restrictions in Operations of Foreign Linear Media (Article 121)

Regarding the operation of foreign linear media proposed changes to Article 121 give the National Council powers to oblige foreign linear media to provide the National Council at its request with the ownership structure of the foreign linear media and any documentary information necessary to establish links to companies or owners established in the Aggressor State (as defined under Article 121 (1-3)).

6.4.4 Ban on Distribution of On-Demand Audiovisual Media Service and Services of Audiovisual Service Providers of the Aggressor State in the Territory of Ukraine (Article 123)

Regarding Article 123, the proposed amendments relate only to changes in the timelines for information provision and action of the National Council and the Communication Service Regulator.

6.4.5 Other Restrictions on Media Actors' Activities During the Armed Aggression (Article 124)

Several new clauses are proposed under Article 124. These include a ban on printed media distributing schedules of programmes of audiovisual media services of the aggressor state, a clause which has been moved from Article 48 (7). Article 124 (7) refers to the need to follow any requirements set in an Act by Parliament or the President in relation to honouring those deceased during the aggression.

Of significance is Article 124 (8), which introduces the possibility for an unscheduled inspection of an online media entity. This can take place following the procedure for registration where this has revealed facts or attributes of violation of Clauses 1 to 4, 10 to 12 of Part 1 of Article 36, or Part 1 of Article 119 of the Law.

These violations under Article 36 (clauses 1- 4) concern the distribution of prohibited content (in summary): information that denies or justifies the criminal nature of the communist totalitarian regime or the criminal nature of the National Socialist (Nazi) totalitarian regime, or information that contains propaganda of the Russian totalitarian regime, armed aggression of the Russian Federation as a terrorist state against Ukraine, as well as symbols of the military invasion of the Russian totalitarian regime (clauses 10-12). Violations in relation to Part 1 of Article 119 of the Law refer to distributing:

1) information that covers armed aggression against Ukraine as an internal conflict, civil conflict or civil war, if the consequence is incitement to hatred or enmity or calls for violent change, overthrow of the constitutional order or violation of territorial integrity.

6.5 Strategy implementation and determination of broadcast coverage areas for DTT

A minor rewording of Article 9 which relates to the content of the National Council's Strategy Implementation Plan and Annual Report is introduced.

The second amendment complements the National Council's responsibility on managing broadcasting frequencies and infrastructure modernisation with a specific mention of the 'Broadcasting Network Development Concept of the Public Broadcasting Company of Ukraine' (as specified under the Law 'On Social Media') and a broader reference to the 'needs to develop other audiovisual media'.

The changes further specify the National Council's remit and procedures. They do not introduce substantive alterations or shifts in policy.

Under Article 10, a new provision streamlines the approval process in case of determining broadcasting coverage areas. It also emphasises alignment with the Strategy Implementation Plan, omitting references to the broader Strategy, thus narrowing the scope to specific, actionable steps. As noted above (6.1.7), under Article 10 (4), the task of determining the coverage area of the broadcasting channel or the air multichannel electronic communication network has been transferred from the Audiovisual Council to the Communication Service Regulator. These changes aim to simplify decision-making and reduce procedural overlap, potentially increasing efficiency.

6.6 Licensing and registration

6.6.1 *Terminating Use of the Analogue Television Broadcasting Standard (Radio Technology) (Article 12)*

The amendment specifies the actions that take place when the broadcasting license of a media entity is revoked. It is envisaged that the National Council ensures that the entity can continue broadcasting in the territory, either through a competition for available channels or by including it in the universal media service.

In comparison with the current provision, the proposed amendment seem to be more responsive and protective of the public interest by ensuring continuous media service while maintaining procedural fairness for the affected entity. It introduces a more nuanced and flexible process that addresses both immediate opportunities (free channels) and complex situations (requiring frequency estimation), which the current provision lacks. It strengthens the safeguards by providing an interim continuation of broadcasting until a definitive solution is reached.

6.6.2 *Broadcast licences without competition*

Article 50 clarifies that broadcasting licences guaranteed by the Law of Ukraine 'On Social Media in Ukraine' shall be issued without a licence fee and a competition guarantee, with due consideration of the Strategy Implementation Plan as regards creation of broadcasting channels or channels of air multichannel electronic communication networks. This is reiterated in several places (Article 51 (1)).

The amendment ensures that the overall Strategy Implementation Plan is taken into account. For the sake of consistency, the phrase 'broadcasting licence without a competition' is then included where relevant in the articles related to licensing (e.g. Article 50 (8.1))

6.6.3 *Procedures for organising competitions*

Article 51 (2) logically adds the situation where the National Council has not selected a winner of a competition as a legitimate reason for running another competition. Article 51 (1.2) is updated to require applicants to include the proposed starting date of operations in their plan.

Article 51(2) also introduces the procedure that rather than 'inform' the electronic communications service of changes list of audiovisual media entities entitled to broadcast in the respective air multichannel electronic communication network, the National Council will send the relevant Resolution. This is an example repeated throughout of changes in the nature of informing and sharing information in relation to Acts of the Council (as elaborated under Article 87). Such changes are primarily technical in nature and do not introduce substantive alterations or shifts in policy.

Article 52 has two additional clauses that direct applicants to the details required in the documents to be submitted (references to Article 51 parts 7 and 8). This additional information is likely added to enhance clarity of the process by directing applicants towards the more detailed provisions. Information submitted by candidates (which is not confidential) shall be kept on the website of the Council for 6 months) (Article 52 (5)).

As regards admitting candidates to the competitions for licences, Article 53(2) outlines the conditions under which a candidate can be excluded. This has been amended with a new paragraph 7 that includes the situation where:

the National Council has received information on the effect of the court verdict of guilty in the criminal case involving the candidate, its senior executive and/or ultimate beneficial owner, which provides for limitation of or ban on media operations.

This is a rational amendment to the list of potential exclusions for holders of licences.⁷

Informing candidates on admittance or exclusion to the competition will be carried out in accordance with Article 87 (as above). However, the timeline for informing (three days) has been removed.

6.6.4 Outcome of the Competition and criteria for decision-making

The criteria which shall be used by the Council for determining the winners of the competition are detailed under Article 55. Some criteria have been adjusted such as (3) which now requires that applicants include also information on the date of start of operations.

Regarding the licence fee for issue or extension of the licence, the changes to Article 56 clarify that the Public Broadcasting Company of Ukraine is exempted (in line with the Law ‘on Social Media’).

Article 58 is amended with regard to the procedure for issues the licence. Successful applicants will receive extracts from the Register rather than a notice.

6.6.5 Extension or change of the licence

Regarding any proposal for changes to the terms and conditions of the licence from the licensee, Article 59 would be amended to place greater emphasis on the goals set by the Strategy or the Strategy Implementation Plan than on the original licence conditions.

6.6.6 Changes to the media register regarding the licence

More amendments related to the Register for Media Entities are discussed below. This section looks at changes related to the licensees and changes made by the licensees themselves. Article 60 provides for broader grounds for media entities to challenge a resolution of the Council to refuse to change the details in the Register. The timeframe for changes in relation to the programming concept have been made stricter – this can happen only five years after the issue of the licence instead of three (Article 60 (10)). Article 61 provides more detail on the types of fee to be paid for amendments to the Register depending on the nature of the changes.

⁷ See examples in EU Member States: Mapping of licensing systems for audiovisual media services in EU-28, European Audiovisual Observatory, Strasbourg, 2018: <https://rm.coe.int/licensing-mapping-final-report/16808d3c6f>

6.6.7 Revocation of the licence

Minor changes are made here. Article 62 (1.9) is re-phrased and seems to be clearer. Timelines for actions of the Council are increased under Article 62 (3 and 4).

6.6.8 Registration of Media Entities

Article 63 now includes ‘specialised printed media’ among those for whom mandatory registration is required. From Article 111 (11.8), it is understood that this type of media is of an adult nature. Other printed media can enter the register on a voluntary basis.

Article 63 (4) further clarifies that only media entities entered in the Register can avail of state grants and other types of state support or provide works or services to public authorities and self-government bodies.

This is an important provision that serves to encourage media entities to be in the register if they wish to access public funding. Access to public funding should be based on transparency regarding the media outlet, its contact details and its ownership.

Additional detail is included under the requirements for information from services provided over the internet. This is of a technical nature. Natural persons (but not individual entrepreneurs) are also required to submit documentation confirming residence in Ukraine.

The timelines for applying for registration are stricter – this should occur 60 days before the start of operations rather than 30 days.

Registration fees for those denied entry to the register or those entities who withdraw from the registration are now non-refundable.

Some of the procedures of the Council have been given longer timeframes for completion. In addition, when documents are requested by the Council from the media entity a timeframe is introduced.

It can be assumed that most of these changes relate to the need to update and clarify procedures and technical issues regarding the processes on the Register, following the 18 month experience of implementing the Law ‘On Media’.

The Article also addresses ‘Restrictions on the Media Ownership Structure and Funding During the Armed Aggression’ as elaborated under Article 120 (see also 6.4.2 above). The Council can demand more documentation from a media entity where it has reasoned grounds to believe that the applicant fails to meet the requirements set by Clauses 4, 5 of Part 1 of Article 120 (clause 4 is in the current Law, clause 5 is a proposed addition to the Law), which state:

4) a legal entity that receives funding (credits, loans, borrowings, investments, sponsors' contributions, charitable contributions, other financial assistance) from individuals who are citizens of the aggressor state (occupying state), legal entities registered in such state or located in such state.

5) the person whose medium has been found to have attributes of editorial control by the persons specified in Clause 14 hereof.

It is assumed that the intention is to refer to Clause 1 (4).

There are several instances in the Law where it is stated that: ‘the registrant shall receive an extract from the Register via the electronic account any time’ (for example Article 63 (17)). It is not entirely clear what is meant by this. It could be assumed that the registrant can request an extract via their electronic account ‘at any time’. It is recommended to update this.

6.6.9 Amendments to the Register

Article 64 increases the time frame whereby a registrant must submit an application for changes to the register in the case of reorganisation of the media entity. This is now within 15 rather than 10 days following, for example a change of ownership. Article 64 (2) relates to requirements regarding transparency of media ownership as part of the data in the register. Where ownership changes, the new ownership must meet these requirements to avoid having the registration revoked. Article 64 (4) provides specific detail on the information required in within 45 days of such a reorganisation. Article 64 (6) emphasises that a fee equivalent to the registration fee shall be charged for each application for amendments.

Specific changes to the data on the registrant, in particular that related to location, contact details (means of distribution in relation to each type of media entity) must be made by the registrant themselves within the Register within ten days of any changes to the above. No fee will be charged in this case.

Hence, it is apparent that there are some areas that the registrant can change themselves without cost, and other areas of the Register which can be achieved only via application to the National Council and which incur a fee.

6.6.10 Denial of registration and revocation of registration

The following outlines the changes to this section. Under Article 65 (1-1), registration is denied where the ownership structure of media entities includes state bodies, local self-government bodies, their associations (and other voluntary unions), except for exceptions stipulated by law, as well as legal entities founded by such bodies, except for scientific institutions, educational and cultural institutions. Such entities cannot be considered as print media entities under Article 15 (2), or as online media entities (Article 16 (2)). Article 21 (1) is included here in relation to citizens or residents or legal entities registered in Ukraine as being rightful owners of audiovisual media entities. A similar requirement is included for audiovisual service providers (Article 22 (1)).

Regarding video-sharing platforms, they must qualify as under the definition in Article 18 (1).

Hence, this section links the possibility to refuse registration with definitions and restrictions on the ownership of media entities.

Article 65 (2) refers to requirements regarding transparency of media ownership (including the provisions above on ownership and also the specific provisions on transparency of media ownership under Article 25). A new provision - Article 65 (2.7) - reiterates the case where:

‘the National Council has received information on the effect of the court verdict of guilty in the criminal case involving the applicant, its senior executive and/or ultimate beneficial owner, which provides for limitation of or ban on media operations.’

Hence, this section links the possibility to refuse registration with requirements on transparency of ownership of media entities and also the restrictions regarding criminal convictions in the Law. It also (Article 65 (2.8))⁹ clarifies that the procedure for denial is carried out as under Article 124. In addition, the timeframe for establishing such a denial is extended from one month to two months (Article 65 (2)).

Exceptions have been added to the right to re-submit an application in the case of a refusal of registration. These include the instances where penalties have been imposed for violations of Article 36 regarding the distribution of prohibited content (Clauses 1-4), information that denies or justifies the criminal nature of the communist totalitarian regime or the criminal nature of the National Socialist (Nazi) totalitarian regime, or information that contains propaganda of the Russian totalitarian regime, armed aggression of the Russian Federation as a terrorist state

against Ukraine, as well as symbols of the military invasion of the Russian totalitarian regime (clauses 10-12). Violations in relation to Part 1 of Article 119 of the Law are also included and refer to distributing:

1) information that covers armed aggression against Ukraine as an internal conflict, civil conflict or civil war, if the consequence is incitement to hatred or enmity or calls for violent change, overthrow of the constitutional order or violation of territorial integrity;

Such media entities will have the right to re-submit an application in the case of a refusal of registration only 6 months after the decision of the National Council.

The revocation of registration is based on similar grounds to that of refusal of registration. Revocation will also take place where the media entity (is):

1) an individual who is a citizen of the aggressor state (occupying state), except for persons who have a temporary or permanent residence permit in Ukraine;

2) a legal entity registered in the aggressor state (occupying state) or located in such a state;

3) a legal entity in which the ultimate beneficial owner, key participant or owner of substantial participation at any level of the chain of ownership of corporate rights is a natural person who is a citizen or resident of the aggressor state (occupying state), or a legal entity registered in such state or located in such state; (Article 120 (1-3)).

Under Article 65 (6), a distinction is made between revocation of registration by a Court or by the National Council. Where the registration is revoked by the court decision, the National Council shall, within three days upon receipt of the resolution, make respective amendments to the Register and post information on its website. Where registration is revoked by the decision of the National Council, the National Council shall, within five business days upon receipt of the resolution, send a copy thereof to the registrant, make respective amendments to the Register and post the information on its website.

6.6.11 Registration for foreign linear media

It is proposed that Article 66 (2) would include the senior executive of the foreign linear medium as a person who can apply for an application to register. As with proposed changes for national services such applications would be required to be submitted 60 days in advance of starting operations rather than 30 days Article 66 (3). Article 66 (6) addresses the need for the National Council to have access to the content of the foreign linear media service (for example via service access card or codes for conditional access system). A further clause is added that in the case where official monitoring cannot be carried out based on the technical parameters of access to the service that are furnished by the applicant, the National Council shall leave the application for registration of the foreign linear medium without action.

As Article 121 addresses restrictions on the activities of foreign linear media, these issues are also dealt with here in relation to the Register. In order to establish whether there are problems in relation to Article 121 (1-3) (text below), a further clause provides that the National Council shall have the right to request data (information) that enables identification of all the persons with direct and/or indirect major shareholding in the media entity. The proposed change also provides details regarding this process including translations of official foreign documents.

If the applicant fails to furnish the information and/or documents requested by the National Council when due the application for registration of the foreign linear foreign medium shall be left without action by the National Council.

Article 121. Restrictions on the activities of foreign linear media

1. The National Council shall refuse or cancel the registration of a foreign linear media outlet in case one of the following circumstances is revealed: 1) such media is registered (including as a legal entity) in the aggressor state (occupying state); 2) the ultimate beneficial owner, key participant or owner of substantial participation at any level of the chain of ownership of corporate rights of such media is the person specified in part one of Article 120 of this Law; 3) there are signs that editorial control over such media is exercised by persons referred to in part one of Article 120 of this Law.

A failure to meet these requirements will need to denial of registration or revocation of registration (Article 67 (4)).

6.6.12 Electronic Account (Article 69)

The amendment expands the scope of obligations of media providers and introduces new functionalities (e.g., automated channel list creation and excerpts formation) of the electronic system for actions related to licensing and registering of media entities, used for facilitation of communication between the National Council and service providers. The article is aligned with the amended Article 22 as regards the obligation of media providers to submit the information on the number of users of their media services.

6.7 Transparency of Media Ownership

Council of Europe standards have frequently underlined the importance of media pluralism and transparency of media ownership for safeguarding public debate in democratic societies.⁸ The Law ‘on Media’ already has quite strong requirements regarding transparency of media ownership. The proposed amendments introduce several changes: some are aimed at enhancing transparency of ownership details (including with regard to off-shore companies); while another change enhances the powers of the National Council to investigate a media entity's compliance with ownership structure requirements.

6.7.1 Ownership Structure Requirements (Article 25)

The amendment expands the original provision by addressing cases where no individuals or entities hold substantial interest or determinant influence. It ensures that transparency requirements still apply in such situations by mandating the identification of key members in the ownership structure.

A new condition is reasonably suggested in clause 1 of part 2 as follows:

Where there are no persons with direct and/or indirect substantial interest in the media entity or a possibility of considerable or determinant impact upon management and/or operation of the media entity

In this case, the focus shifts to identifying all key members of:

⁸ See for example: Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership

- *the media entity and*
- *all legal entities in the equity right holding chain of the media entity.*

6.7.2 Ensuring Compliance with the Ownership Structure Requirements (Article 27)

The amendment introduces additional grounds for the National Council to investigate a media entity's compliance with ownership structure requirements. The inclusion of ownership review in the context of registering media entities is justified. Another new provision stipulates that during the review of applications, if the ownership structure fails to meet the requirements of Clause 3 of Part 2 of Article 25—specifically, that there are no legal entities with significant participation in the media entity registered in offshore zones listed by the Cabinet of Ministers of Ukraine—this issue must be addressed. This addition is also reasonable.

The above amendments align with the principles outlined in Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership by the Council of Europe. The Recommendation emphasises the importance of transparency in media ownership to safeguard public debate and ensure media pluralism, as outlined in its preamble and sections on ownership and control. It advocates for mechanisms to ensure the public availability of accurate and up-to-date information regarding media ownership structures, including direct and beneficial ownership. The provision in the amendments requiring identification of key members and equity-holding entities directly reflects this principle.

The inclusion of investigative powers for the National Council to review compliance with ownership requirements, particularly regarding entities registered in offshore zones, resonates with the Recommendation's guidance to have independent, well-resourced bodies to oversee media ownership and prevent undue concentration.

6.8 Adjustments to the provisions on the Co-regulatory body

6.8.1 Co-Regulation Content, Subject and Purpose (Article 92)

This key amendment broadens the scope of co-regulation to include responsible AI use in the media industry. While commendable, the amendment may be too broad, as 'media industry' is not defined in the law. This lack of clarity could lead to inconsistent interpretations and challenges in implementation.

6.8.2 Establishing Co-Regulatory Authorities (Article 93)

The amendments further specify criteria and procedures for establishing co-regulatory authorities as part of a collaborative governance framework. The key changes refer to the process of establishing co-regulatory authorities and work groups in the media sector. The updated text emphasises that co-regulatory authorities must be established as public unions by licensees, registrants, and their associations, aligning more explicitly with the Law On Public Associations. The application process for work groups has been expanded to include additional requirements, such as providing the name of the media entity, public association, or association of enterprises; the date of the start of media operations; or confirmation of active operations for associations of enterprises. This confirmation is tied to specific criteria, such as holding regular public events and engaging in professional discussions within the respective media branch over the past three years. By requiring proof of consistent public engagement—such as holding regular events and initiating professional discussions over a sustained period—it prevents associations from being created solely for the purpose of influencing or exploiting the co-regulatory scheme. Without these criteria, there would be a risk of organisations being set up artificially or opportunistically.

to gain undue influence in the regulatory process, undermining the credibility and effectiveness of co-regulation.

The rejection criteria for applications have also been revised, allowing for the dismissal of applications that lack evidence of active operations by associations of enterprises, alongside existing reasons such as late submissions or ineligibility of the applicant.

The provisions on rating voting for work groups have been clarified, explicitly linking voting procedures to candidates nominated by licensees, registrants, and other entities in the relevant categories.

Relevant to this are the amendments of the Law of Ukraine ‘On Public Associations’ (Bulletin of the Verkhovna Rada, 2013, No. 1, Article 1 as amended and supplemented) and Law of Ukraine ‘On Public Media in Ukraine’ (Bulletin of the Verkhovna Rada, 2014, No. 27, Article 5, as amended and supplemented).

6.8.3 Charter of the Co-Regulatory Authority (Article 94)

The amendments to Article 94 introduce three changes to the governance and financial operations of co-regulatory authorities, refining the framework to ensure clarity and enforceability.

First, in paragraph three it is specified that members excluded due to unpaid membership fees may only reapply for admission after repaying their debt. This addition enhances financial accountability and ensures that members fulfil their obligations before re-joining the co-regulator.

The requirement for a general meeting of the co-regulatory authority to be valid (or ‘qualified’) has also been adjusted. Previously, the meeting was considered valid if at least half of the members were present. The new amendment raises this threshold to ‘more than half’ of the members, strengthening the quorum requirements and ensuring broader participation in decision-making processes.

The last amendment refines the provision regarding administrative costs. The original text allowed funding from member contributions and ‘other legal funding sources’, while the revised version simplifies this to »other legal sources,« potentially broadening the scope of allowable (funding) sources.

6.8.4 Concept of the Public Association (Article 1 of the Law on Public Associations)

The amendment expands the definition of public associations to include other legal entities defined by law. This addition allows public service media to form associations and join the coregulatory body as stipulated in Article 93 of the Law on Media.

6.9 State broadcasting, local public service media and community media

6.9.1 Supervisory Board of the Local Public Audiovisual Media Entity (Article 31)

The amendment enhances governance and accountability mechanisms for local public media.

The amendments to Article 31 introduce changes that seem to aim at refining the rules for the formation, composition, and functioning of the supervisory boards of local public audiovisual media. One of the changes concerns the eligibility of representatives from regional or local creative unions of journalists and public associations. Previously, these organisations were required to have organised public events for at least three years. The amendment reduces this requirement to two years, potentially lowering the threshold for participation while maintaining

the requirement for demonstrated community engagement. This change could encourage broader representation without entirely sacrificing the criterium.

Another important modification is the inclusion of an exception to the rule regarding the number of representatives from local self-government bodies and creative unions. While the number of representatives from creative unions must exceed those from local self-government bodies by one, the amendment specifies that this rule does not apply in cases of early termination of a member's powers due to the dissolution of the deputy faction or group they represent. This clarification ensures that the supervisory board remains functional in cases of unexpected changes in its composition.

The amendment also introduces a new provision regarding the employment restrictions of supervisory board members and the head of the local public audiovisual media entity. Members of the supervisory board and the head of the entity may not be deputies of local councils, emphasising a separation of powers and reducing potential conflicts of interest. Additionally, the restrictions on the head of the entity combining their role with other jobs have been clarified and expanded. While teaching, scientific, and creative activities were previously permitted, the amendment adds medical practice, coaching, and sports referee roles to the list of exceptions, provided they are not performed for the media entity itself. This adjustment allows greater flexibility while maintaining clear boundaries to avoid conflicts of interest.

6.10 Public Broadcasting Company

Also relevant to the national public broadcaster are the amendments to the Law of Ukraine 'On Public Media in Ukraine' (Bulletin of the Verkhovna Rada, 2014, No. 27, Article 904, as amended and supplemented).

6.10.2 Principal Tasks of the Public Broadcasting Company of Ukraine (Article 4)

The amendment updates the principal tasks of the public broadcaster to emphasise promoting the languages and cultures of indigenous peoples and national minorities.

6.10.3 Public Media (Article 5)

The amendments introduce changes to the framework regulating broadcasting channels for the Public Broadcasting Company of Ukraine. The provision regarding regional broadcasting channels has been revised: the number of local (regional) television channels is now to be determined by the Broadcasting Network Development Concept of the Public Broadcasting Company of Ukraine, approved by its management board. This replaces the earlier reference to the regional broadcasting concept and shifts decision-making authority more directly to the broadcaster itself.

Another amendment specifies that the scope of broadcasting channels or channels in the air multichannel electronic communication network guaranteed to the Public Broadcasting Company of Ukraine will be outlined in the Strategy Implementation Plan for the National Council on Television and Radio Broadcasting. This scope is to be based on the Broadcasting Network Development Concept, developed by the Public Broadcasting Company of Ukraine in consultation with the National Council. These provisions introduce a more formalised and coordinated process for determining broadcasting coverage.

Additionally, the amendments allow the Public Broadcasting Company of Ukraine to act as a founder or member of public unions and co-regulatory authorities, clarifying its role in participating in broader media governance structures.

6.10.4 Supervisory Board of the Public Broadcasting Company (Article 8)

The proposed amendment removes the provision stating that members of the Supervisory Board of the Public Broadcasting Company of Ukraine must exercise their powers without remuneration while martial law is in effect. This change is reasonable as it aligns with principles of board independence and professional integrity, allowing that the Supervisory Board remains composed of a diverse group of professionals, regardless of financial circumstances.

6.10.5 Management Board Responsibilities (Article 12)

The amendments introduce changes to the reporting process of the management board of the Public Broadcasting Company of Ukraine. The term annual operational report, now explicitly including a description of operations and annual financial statements, replaces the less precise phrasing of general report and report on financial and economic operations. This can contribute to a clearer understanding of the content expected in the reports.

The amendment also adjusts the deadline for submitting reports, extending it from March 1 to April 30. The chairperson is tasked with ensuring the report is both publicly posted on the broadcaster's website and sent to the Cabinet of Ministers and the National Council of Ukraine on Television and Radio Broadcasting. This allows for a greater transparency and public accountability.

6.10.6 Sources of Funding for Public Broadcasting (Article 14)

This amendment allows the Public Broadcasting Company of Ukraine to use budget funds for advance payments in co-production agreements with Ukrainian or foreign producers, for a period of up to 24 months. The provision is likely intended to enhance the financial sustainability and operational flexibility of the public broadcaster by enabling it to engage in co-productions that require upfront funding. By allowing advance payments within a 24-month limit, the amendment facilitates long-term planning and collaboration with producers, helping the broadcaster manage production schedules and secure audiovisual content, while also ensuring budgetary discipline.

6.10.7 Audit Requirements (Article 16)

The amendment specifies the appointment of an external auditing entity through a competition managed by the supervisory board. It requires publication of audit findings as part of the annual operational report. The amendments modify the provisions regarding the auditing process for the Public Broadcasting Company of Ukraine. The term 'auditing firm' is suggested to be replaced with 'auditing entity,' probably broadening the scope for selecting auditors through an open competition managed by the Supervisory Board. A new provision also ensures that the management board must grant the auditing entity access to necessary information, as defined by the Articles of Association, to facilitate the audit process.

Additionally, the requirement for making mandatory financial statements and audit findings public has been updated. Instead of being published in printed and electronic media, these findings will now be included as part of the annual report of the Public Broadcasting Company of Ukraine, in accordance with Article 12 of the Law. These changes appear to streamline the audit process and enhance financial transparency within the broader reporting framework.

Improvements to both the governance of the Public Broadcasting System and the Auditing of the finances reflect recommendations from an earlier Opinion provided to the Council of Europe.⁹

6.10.8 Licensing and Registration of Public Media (Article 17)

The amendment refers to the process for the Public Broadcasting Company of Ukraine to obtain broadcasting licenses using the radio frequency spectrum. It explicitly includes cases of transitioning to new broadcasting technologies or air multichannel electronic communication networks. These licenses, within the scope defined by Article 5, are exempt from competition, license fees, and competition guarantees. Licenses exceeding these guarantees must still be obtained through standard procedures.

6.10.9 Editorial Charter and Editorial Board (Article 19)

The amendment expands editorial charter requirements to include broader diversity considerations by explicitly adding indigenous peoples and national communities to the previous national minorities.

6.10.10 Final and Transitional Provisions

The amendment specifies the inclusion of property from regional broadcasting companies into the Public Broadcasting Company's authorised capital following the restoration of constitutional order in temporarily occupied territories (Crimea, Donetsk and Luhansk). In light of maintaining the integrity and accountability of public broadcasting assets during the transitional process, the amendment requires that the property of these organisations—both pre-occupation assets and those acquired during the occupation within allocated land plots—first undergo independent assessment.

6.11 Referendum campaigns

The following section provides comments on the amendments to the Law of Ukraine 'On the Ukrainian Referendum' (Bulletin of the Verkhovna Rada, 2023, No. 1-2, Article 1 as amended and supplemented).

The amendments are mostly minor linguistic changes. In some cases there is no difference in wording identifiable from the comparison table (e.g., Articles 94(9) and 98) which is maybe an issue related to translation. In some other cases it is impossible to fully assess the implications of the changes for an outside expert and these difficulties may also be related with the fact that the experts do not work with the original texts, e.g., change from 'medium' to 'media' in Article 99 or 'entity' to 'entities' in Article 100(13) or the addition of a comma in Article 991.

One of the key amendments is the replacement of the broad term »election process« with a more specific »Ukrainian referendum« aligning the wording with the scope of the law.

Another more significant change is the replacement of the word 'cruelty' with 'violence' which widens the scope of ban in Article 100(1)1. The wording of Article 100(7). is changed to further specify the ban of any attempts to influence voters by giving them free items or benefits during the Ukrainian referendum.

⁹ Legal Opinion on the alignment with European standards of the Draft Decree of the Cabinet of Ministers of Ukraine 'On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No 1039 dated 28 December 2016 and the Order of the Cabinet Ministers of Ukraine No 18 dated 16 January 2017'

Article 36 addresses restricted content. It replaces the term ‘cruelty’ with ‘violence’. This is following the replacement of cruelty with violence in the Law On Media, which is more closely aligned with definitions of hate speech from Council of Europe standards and Article 6 of the AVMS Directive (see 5.21).

6.12 Foreign Language Broadcasting

The following section provides comments to the Law of Ukraine ‘On the Foreign Language Broadcasting System of Ukraine’ (Bulletin of the Verkhovna Rada, 2016, No. 4, Article 37 as amended and supplemented).

Article 2. Legal Framework for Operation of the Foreign Language Broadcasting System of Ukraine, is proposed to amend it to read as follows:

In order to ensure adherence to the principles of freedom of speech and international standards for information operations, state foreign language broadcasting entities shall be established by the Supervisory Board of the IBMPU and the Supervisory Board of the Ukrainian National News Agency ‘Ukrinform’. The composition of the Supervisory Boards shall be approved by the Cabinet of Ministers of Ukraine based on the Recommendation of the Designated Authority.

The fundamentals of operations and powers of the Supervisory Boards shall be prescribed by Articles of Association of respective state foreign language broadcasting entities.

The amendments bring changes to the governance and management structure of state foreign language broadcasting entities. In Article 2, the role of establishing state foreign language broadcasting entities is shifted from a generic ‘Designated Authority’ to the Supervisory Boards of the IBMPU (International Broadcasting Multimedia Platform of Ukraine) and the Supervisory Board of the Ukrainian National News Agency ‘Ukrinform.’ The composition of these Supervisory Boards will now require approval by the Cabinet of Ministers of Ukraine, based on recommendations from the above mentioned ‘Designated Authority’. Furthermore, the operations and powers of these Supervisory Boards will be governed by the Articles of Association of the respective state foreign language broadcasting entities. This restructuring centralises decision-making and strengthens institutional oversight by delegating responsibilities to Supervisory Boards specific to these entities.

Article 9, which previously required the establishment of the Supervisory Board of the IBMPU is removed entirely. By doing so, the amendment streamlines governance by integrating the supervisory and operational framework of the IBMPU into the broader supervisory structure specified in Article 2.

These changes appear to aim for a more coherent and centralised governance structure for state foreign language broadcasting entities, bringing their operations closer to international standards.

7 RECOMMENDATIONS AND POTENTIAL ACTIONS

In sum, it is recommended that:

1. Adequate financial and human resources are allocated to the National Council to ensure it can fulfill its expanded mandate effectively.
2. The powers or tasks of the National Council are expanded to place a stronger emphasis on bi-lateral and European cooperation, in particular in relation to identification of foreign services and approaches to dealing with problematic services.
3. Procedural reforms are implemented cautiously, with robust safeguards to maintain transparency and accountability.
4. Clear and consistent criteria for applying sanctions, including revocation of registrations, are implemented to prevent arbitrary enforcement and ensure fairness.
5. Intermediate penalties, such as warnings or fines, are considered before implementing severe measures like revocation of registration to ensure proportionality.
6. Engagement of stakeholders in the co-regulatory framework is carried out in a manner that ensures inclusivity and maintains credibility.
7. The impact and effectiveness of the amendments is regularly assessed and any remaining or emerging gaps or challenges are addressed accordingly.
8. Training and capacity-building programmes for regulatory authorities are developed or supported to enable them to navigate the new legal framework.
9. Public awareness campaigns are conducted to inform media entities and stakeholders about the changes and their implications.
10. Given the complexity of rules and procedures related to the Register and the requirements regarding data, it would be useful to provide very clear user instructions and possibly also awareness raising exercises (workshops) with media entities to ensure compliance with these rules.

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