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LEGAL OPINION

On the Draft Law of Ukraine "On Amending Certain Laws of Ukraine Regarding the Regulation of Activities of Information-Sharing Platforms through which Mass Information is Disseminated"

Division for Co-operation on Freedom of Expression

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 – Phase II" (SFEM-UA – Phase II) 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 – Phase II" by Tetiana Avdieieva, Council of Europe consultant.

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Table of Abbreviations

Draft Law of Ukraine "On Amending Certain Laws of Ukraine Regarding the Regulation of Activities of Information-Sharing Platforms Through Which Mass Information is Disseminated" (registration number № 11115)	The Draft Law
European Convention on Human Rights	ECHR
European Court of Human Rights	ECtHR
Charter of Fundamental Rights of the European Union	EU Charter
Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)	EMFA
Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)	DSA
Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)	DMA

Introduction

This Legal Opinion has been prepared by the Council of Europe's Division for Co-operation on Freedom of Expression, under the Project "Safeguarding Freedom of Expression and Freedom of the Media in Ukraine – Phase II" (SFEM-UA – Phase II) at the request of the Parliamentary Committee on Humanitarian and Information Policy of Ukraine, communicated on 11 April 2025.

It assesses the compliance of the Draft Law of Ukraine "On Amending Certain Laws of Ukraine Regarding the Regulation of Activities of Information-Sharing Platforms through which Mass Information is Disseminated" (hereinafter referred to as the "Draft Law") with international standards in the field of freedom of expression, in particular the standards of the Council of Europe and the relevant provisions of European Union law in the context of Ukraine's obligations within accession to the EU processes.

The opinion contains references to the following non-exhaustive list of relevant international legal instruments, in particular advisory documents and case law of the ECtHR:

- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No.5);
- Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries;
- Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018;
- Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom;
- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media;
- Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act);
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act);
- Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

Executive Summary

The Draft Law does not distinguish two legal regimes: the regulation of media entities and the regulation of online platforms. This poses a high risk of non-compliance with the provisions of the DSA and, as a result, Ukraine's failure to fulfil its obligations in the digital sphere within the EU accession processes. To improve the Draft Law, it is necessary to analyse in more detail the requirements and mechanisms proposed by the DSA and design a comprehensive reform in the field of regulation of online platforms, which will address both the issue of countering harmful content and the protection of personal data, copyright protection, ensuring institutional mechanisms for the protection of human rights, etc.

In the context of the appointment of legal representatives, it is envisaged to exclude from the scope of the Draft Law platforms that are registered in the EU or have a legal representative therein. However, an additional requirement for such an exclusion – an obligation for the platforms to interact with the Ukrainian authorities, is likely to lead to the excessive extension of Ukraine's extraterritorial jurisdiction to such platforms without substantial legal grounds, since Ukraine is not yet part of the EU legal space and does not have access to its institutional mechanisms.

It is recommended to align the scope of the legal obligations proposed for online platforms with the requirements of the DSA. The mentioned obligations currently reflect the provisions of the EU Audiovisual Media Services Directive that are applicable to the video-sharing platforms. These rules serve as *lex specialis* compared to the more comprehensive requirements enshrined in the DSA, which should apply to all types of platforms. The authors of the Draft Law should note that international standards do not oblige platforms to remove content or restrict access to it (with the exception of propaganda for terrorism and child pornography) upon request of the regulatory authorities. The only international obligation in this area implies responding to a complaint and providing a reasoned response based on the platform's own analysis. Such design of the obligations ensures the protection of the platforms from potentially unfair decisions of the national courts and administrative authorities.

The transparency obligations do not comply with the standards for disclosure of information set at the EU and Council of Europe levels. In addition, they incorrectly interpret the issue of the presence in the ownership structure of individuals or legal entities associated with the aggressor state through the concept of lack of transparency.

The possibility of creating co-regulatory bodies in the field of online platforms, although not contradicting international standards by default, may lead to an interpretation of the Law that would go against the letter and spirit of the DSA. This, in turn, would mean that Ukraine would not fulfil its obligations within the EU accession sphere.

Finally, the proposed response measures may be ineffective in practice due to the lack of jurisdiction on behalf of Ukraine to enforce decisions regarding fines. In addition, restrictions on the use of platforms that have a non-transparent ownership structure or violate the provisions of the Law of Ukraine "On Media" by the representatives of the state authorities, municipal and financial sectors may lead to a complete ban on the use of key services due to their failure to remove a single piece of content at the request of the media regulator. This, in turn, will result in an excessive and disproportionate sanction that may create significant obstacles to the activities of such entities.

Current Status of Platform Regulation in Ukraine and EU Accession Obligations in this Domain

Ukrainian regulation in the field of online platforms is currently limited to the implementation of the requirements of Article 28b of the AVMSD,[1] which provides a framework mechanism for regulating video-sharing platforms (services for distributing user-generated videos such as YouTube, TikTok, Vimeo, etc.). The provisions of this Directive implemented in the Law of Ukraine "On Media" establish general requirements for the aforementioned types of platforms:

- post the terms of use of the service and familiarize users with them;

[1] AVMSD, Article 28b

- provide for a ban in the terms of use of the service on the dissemination of information that violates the content restrictions prescribed by the Law of Ukraine “On Media”, the requirements of the legislation on copyright and related rights;
- ensure verification of the user's age and provide for the parental control systems;
- implement transparent and understandable mechanisms for users to report the content that may violate the domestic law, etc.

Since the Law of Ukraine “On Media” contains restrictions on the scope of application, most video sharing platforms do not fall under Ukrainian jurisdiction and have not yet been registered in Ukraine. At the end of February 2025, the first three providers of video sharing platforms were registered by the domestic regulator.[2] All of them were Ukrainian entities.

The National Council on Television and Radio Broadcasting of Ukraine is responsible for registration and monitoring compliance with the requirements of the legislation. The media regulator also has the authority to conclude memorandums of understanding with foreign platforms, as well as to address them with requests to remove specific content. However, according to the statements of the National Council, foreign platforms refer to their terms of use (generally mechanisms) or tend to ignore the requests of the media regulator regarding content restrictions.[3] The Law of Ukraine "On Media" does not regulate other entities defined as "information sharing platforms", only mentioning them in the context of the possibility of registering pages on such platforms as online media.

The key stakeholder working on the development of comprehensive regulation of platforms in accordance with the DSA and DMA is the Ministry of Digital Transformation of Ukraine. In 2024, preliminary draft laws harmonising national legislation with these acts were submitted to the European Commission for consideration.[4] Among the issues under discussion is the creation of a regulator in the digital sphere, which will be responsible for the implementation of the DSA.[5] Since this act regulates a sphere other than the media field, in most EU countries, the digital services coordinators powers are not attributed to the media regulators, but left for separate bodies.[6] The European Commission has additionally developed a roadmap for candidate countries to help adapt their legislation to the EU standards. It includes the implementation of such EU regulatory acts as the Data Act, the Data Governance Act, the Artificial Intelligence Act, the General Data Protection Regulation, and others.

As the authors of the EU accession initiative on the implementation of DSA are currently awaiting the conclusions of the European Commission, other draft laws have begun to appear in Ukraine aimed at solving the problem of the spread of illegal content on platforms and the lack of feedback from such platforms upon the regulator's request. Most of the initiatives are trying to fix the situation with the human-rights-incompliant activities of Telegram in Ukraine, since the expert community has expressed well-founded suspicions of the unlawful influence of the aggressor state on its moderation policies and the data processing process by the platform.[7]

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[2] https://webportal.nrada.gov.ua/upershe-natsionalna-rada-zareyestruvala-provajderiv-platform-spilnogo-dostupu-do-video/

[3] https://webportal.nrada.gov.ua/tsyfrovi-platformy-yak-z-nymy-komunikuvaty-i-spivpratsyuvaty-dosvid-ukrayiny/

[4] https://detector.media/infospace/article/230855/2024-08-14-kristina-gavrylyuk-mintsyfry-sered-usikh-krain-kandydatok-do-ies-my-nayblyzhchi-do-implementatsii-ievropeyskykh-aktiv-pro-tsyfrovi-poslugy-y-rynky/

[5] https://thedigital.gov.ua/news/nastupniy-etap-vstupu-ukraini-do-es-dvostoronnya-skrining-zustrich-u-sferi-tsifrovoi-transformatsii-ta-media

[6] https://digital-strategy.ec.europa.eu/en/policies/dsa-dscs

[7] https://texty.org.ua/articles/112268/visim-dokaziv-nebezpeky-telehrama-odnoho-z-najuspishnishyh-rosijskyh-proektiv/?fbclid=IwZXh0bgNhZW0CMTAAAR0s2mN9FH6c-3ptxLY5Garp_DiyaXWd-M2XcXn9neQgLkTgRDjSY3vznpo_aem_AcSgrZmSl4oi6fNV_0kH1WulqpUEI2DvUJsiBBTRqSJZdK22slutUfbeSEDDU441MtXi0ozRpo6mp6BlZ-CbmIHn

However, these initiatives mostly have general wording and requirements applicable to any platform. One of such initiatives is the draft law No 11321, which has already been the subject of the Legal Opinion of the Council of Europe,[8] and has come under criticism due to its non-compliance with standards in the field of platform regulation and freedom of expression. The aforementioned initiative was largely based on the provisions of Draft Law No 11115, which is the subject of this analysis.

Analysis of the Key Provisions of the Draft Law

a. General Comments

The text of the Draft Law contains heterogeneous terminology that may cause numerous conflicting interpretations and applications of the norms. An attempt to introduce the entities that will be regulated in parallel by several overlapping regulatory acts that differ in content and scope will cause enforcement issues and will negatively affect the progress of the EU accession reforms in the digital sphere, if such initiatives are not fully coordinated with the DSA, DMA and EMFA.

In addition, the regulation of platforms in accordance with the DSA and DMA requires the assignment of additional powers to regulatory authorities. These powers are much broader than those provided for in the analysed Draft Law and may require the creation of a separate regulatory authority. The concept for the creation of a single regulator in the digital sphere has already been developed and submitted for preliminary analysis to the European Commission.[9] In the event of an expansion of the powers of the National Council in this area, a conflict with the powers of the new regulator will arise in the future.

According to the Explanatory Memorandum to the Draft Law, the purpose of the regulation is to eliminate threats to national security posed by Telegram. In particular, the document contains numerous references to studies by civil society organisations on the possible impact of Russia on the platform's activities, the amount of harmful content distributed via Telegram, etc. One of the arguments is also the active use of Telegram by representatives of the security and defence forces of Ukraine, which can affect the confidentiality regime of the information distributed (especially if legally proved that Russia indeed has access to the communications' contents). Yet, the Draft Law is not aimed at establishing requirements for Telegram specifically – it proposes a regulatory framework for all platforms of this type, expanding the scope of issues from the sphere of national security to the need to ensure the rights of platforms' users. This, in particular, automatically obliges to take into account the standards of the EU in this area, as well as the requirements of the ECHR and the EU Charter.

The Draft Law is currently inconsistent with current legislation and legislative initiatives in the field of platform regulation. It lacks a comprehensive, systemic approach to implementing regulatory changes. To avoid such inconsistencies, the authorities are recommended to involve all stakeholders, including civil society, industry representatives, academia, relevant state institutions, and international experts, in the development of regulatory acts and their improvement within transparent, inclusive processes.[10]

[8] https://rm.coe.int/lex-06-legal-opinion-ukraine-ua-/1680b5128b
[9] https://www.facebook.com/events/653931720693791/?post_id=659935233426773&view=permalink
[10] Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom, para 1.4

b. The Expansion of the Circle of Subjects Falling Under Legislative Regulation and the Jurisdictional Requirements (Articles 1 and 13 of the Law of Ukraine "On Media")

The Draft Law proposes to introduce into the national legislation a new subject: **information sharing platforms through which mass information is disseminated**, defining them as "*an information-sharing platform on which user accounts (pages, channels, etc.) used to disseminate the mass information are created and operate*". This definition references to the current definition of information sharing platforms, which, according to clause 39 of Article 1(1) of the Law of Ukraine "On Media," are "*a service that provides its users, upon their request, with the possibility of storing and disseminating user information to an unlimited number of persons, if such storage and dissemination is not an insignificant and purely auxiliary function of another service and for objective and technical reasons cannot be used without such a service*".

As already noted in the Council of Europe's opinion on draft law No 11321,[11] the reasons for introducing a new entity are unclear. The current definition of information sharing platforms fully complies with the concept of "online platforms" provided for in Article 3(i) of the DSA.[12] Neither the DSA nor the EMFA provide for a distinction between platforms used by media entities to disseminate information and any other platforms, since, according to Article 18 of the EMFA, any platform may be used to disseminate information in the public interest.[13] Accordingly, the new entity will completely duplicate the notion of information sharing platforms in terms of content and functions, and its legislative definition will create additional legal conflicts. Moreover, the Draft Law proposes to recognise such platforms as media entities, which contradicts their technical and legal nature. For example, the ECtHR, in a series of court cases concerning Internet intermediaries, emphasised that the legal regime of media liability is inapplicable to such subjects.[14]

Since the Draft Law proposes to use the model from the Law of Ukraine "On Media" to determine **whether a platform falls under Ukrainian jurisdiction**, this model partially contradicts the requirements of the DSA. A conflict will arise when it comes to criteria applicable to legal entities that are not registered in Ukraine. In Article 2(13) and Article 123(5) of the Law of Ukraine "On Media", such criteria include, among other things, the availability of information published by national media service providers on a particular platform.

These requirements correlate with the AVMSD, which is aimed at regulating the activities of media service providers. However, for platforms there is a separate regulatory regime provided for by the DSA, which does not contain the criterion of the availability of information disseminated by the national subjects.[15] Since the DSA is a regulation – containing the norms of direct effect, changing or significantly expanding its provisions by national law will contradict the legal nature of this act. Therefore, the issue of establishing the jurisdiction of Ukraine in this field should be guided by separate norms that will correspond to paragraphs 7-8 of the DSA Preamble:

- the use of a language or a currency generally used in the state;
- the possibility of ordering products or services;
- the use of a relevant top-level domain;

[11] https://rm.coe.int/lex-06-legal-opinion-ukraine-ua-/1680b5128b
[12] DSA, Article 3(i)
[13] EMFA, Article 18
[14] Delfi AS v Estonia, App no 64569/09 (ECtHR, 16 June 2015), paras 140-142; Sanchez v France, App no 45581/15 (ECtHR, 15 May 2023), paras 163-164; Tamiz v the United Kingdom, App no 3877/14 (ECtHR, 19 September 2017), paras 79-82
[15] DSA, Article 2(1)

- the availability of an application in the relevant national application store;
- the provision of local advertising or advertising in a language used in the state;
- the provision of customer service in a language generally used in the state.[16]

c. The Scope of the Obligations Imposed on the Platforms (Article 23-1 of the Law of Ukraine "On Media")

The Draft Law proposes to establish obligations for information sharing platforms that actually duplicate the list of obligations provided for in Article 23 of the Law of Ukraine "On Media" for video sharing platforms. Among them: a ban on the dissemination of information provided for in Articles 36, 42 and 119 of the Law of Ukraine "On Media" (content restrictions), an obligation to publish terms of use, procedural requirements for transparent processing of user requests and other basic demands. At the same time, the proposed Article 23-1 of the Draft Law additionally imposes two obligations on information sharing platforms:

- to publish in a place accessible to users, directly on the information-sharing platform and in all platform-related services, the information about their contact details that the users can use to send complaints about mass information disseminated via the platform;
- to restrict, based on the request of the National Council, the distribution in Ukraine of programmes and/or user-generated information, including user-generated videos, that violate Articles 36, 42, 119 of the Law on Media.

At the same time, it is important to understand that the proposed model implements Article 28b of the AVMSD,[17] which provides for a legal regime different from the DSA, and is a *lex specialis* regime created exclusively for video-sharing platforms. Although such requirements do not directly contradict the DSA and partially implement the content of its Articles 14, 16, 20 and 26[18] into Ukrainian legislation, they are less detailed than the aforementioned provisions of the Regulation. In addition, the Draft Law as such does not provide for a system of obligations for platforms of the appropriate form and level. In particular, there is no distinction in the scope of obligations depending on the size/presence of the entity within the territory of Ukraine, there are no requirements for conducting a human rights impact assessment of the services, and many others.

The Draft Law also does not implement in any way the requirements of the EMFA, namely Section 4,[19] which concerns additional obligations for very large online platforms (VLOPs) in the context of media activities. The proposed regulation is fragmentary and **will most likely be considered an improper implementation of the DSA and EMFA** and will not meet the EU accession requirements.

At the same time, it is worth noting the provision authorizing the National Council to issue take-down requests regarding the materials distributed on platforms. Such power in itself does not contradict the requirements of the DSA[20] and the standards of the Council of Europe.[21] However, according to Article 23-1 of the Draft Law, platforms are obliged not only to respond to the request, but also to "*restrict the distribution of … information on the territory of Ukraine*" on a mandatory basis. This **duty directly contradicts Article 9(1) of the DSA**, according to which "*providers of intermediary services*

[16] DSA, Recitals 7-8
[17] AVMSD, Article 28b
[18] DSA, Articles 14, 16, 20, 26
[19] EMFA, Articles 18-20
[20] DSA, Article 9
[21] Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, para 1.3.3

shall inform the authority issuing the order, or any other authority specified in the order, of any effect given to the order without undue delay, specifying if and when effect was given to the order".[22]

The ability for the provider to independently analyse the content's compliance with international freedom of expression standards serves as an important safeguard against abuse of power by the issuing authority. The ECtHR supports a similar approach, noting that platforms should respond to requests rather than automatically restrict content when receiving complaints,[23] as content often requires additional assessment.

d. Designation of the Legal Representative (Article 23-1 of the Law of Ukraine "On Media")

One of the key requirements ensuring compliance with the provisions of Ukrainian legislation is the appointment of a legal representative on the territory of Ukraine by foreign platforms. At the same time, a conflict arises already in the wording of the Draft Law, since an attempt is made to impose a legal obligation on an entity "*that does not fall under the jurisdiction of Ukraine or a Member State of the EU*" - that is, for which obligations on the territory of Ukraine cannot arise in principle. In such a situation, to enable the imposition of legal obligations on foreign entities, the working models are either voluntary registration (as in the case of video-sharing platforms in accordance with the Law of Ukraine "On Media"), or the exploration of the options for establishing jurisdiction over them (although, it is important to ensure that such provisions do not contradict the DSA).

In addition, the proposed norm distinguishes between platforms that are registered in the EU or have legal representation there, and other platforms. The former may be exempted from the requirement to appoint a representative in Ukraine if the legal representative in the EU interacts with the Ukrainian regulator. Since the Draft Law provides for the expansion of the powers of the National Council, it will be the authority obliged to publish the contact details of the legal representatives of platforms in Ukraine.

This provision aims to simplify the interaction between platforms and Ukrainian authorities. At the same time, it combines two provisions of the DSA: Article 11 on the appointment of point of contact who will interact with authorities, and Article 13 on the appointment of legal representatives of platforms for compliance with the DSA.[24] The combination of powers is not excluded by paragraph 44 of the Preamble to the DSA,[25] but the key difference between these entities is that unlike the legal representative, "*the electronic point of contact should serve operational purposes and should not be required to have a physical location*".[26] Hence, **it is worth clarifying the purposes for which such an entity is designed**: if it is exclusively communication with authorities, physical registration is not a mandatory requirement. If legal actions are required, then the demand of physical presence is appropriate.

At the same time, as already mentioned in the opinion of the Council of Europe on draft law No 11321[27] on a similar provision on legal representatives, the key problem lies in the practical implementation of such provisions. The Draft Law leaves the possibility of not appointing legal representatives in Ukraine to providers who already designed and registered them in the EU,

[22] DSA, Article 9(1)
[23] Delfi AS v Estonia, App no 64569/09 (ECtHR, 16 June 2015), paras 152-159
[24] DSA, Articles 11 and 13
[25] DSA, Recital 44
[26] DSA, Recital 42
[27] https://rm.coe.int/lex-06-legal-opinion-ukraine-ua-/1680b5128b

provided that such representatives interact with the Ukrainian authorities. First, many companies, such as Meta,[28] Telegram[29] and Google,[30] have already announced that they will not interact with the authorities of countries outside the EU. Second, there are no mechanisms in the EU countries that could oblige them to interact with the Ukrainian regulators. As a result, it remains to be expected that companies can be independently updated on the novelties of the Ukrainian legislation and appoint a representative. Otherwise, the norm is impossible to implement in practice.

e. Transparency of the Ownership Structure of the Platforms (Articles 25 and 120 of the Law of Ukraine "On Media")

Transparency of ownership structure is one of the mechanisms for ensuring the independence of the media space, as well as the accountability of public sector entities (state and municipal bodies). The norms for ensuring transparency of ownership structure of media service providers are contained in the Recommendations of the Council of Europe and the European Commission,[31] as well as in the AVMSD[32] and EMFA.[33] Within the EU, there is also a special mechanism for monitoring the transparency of media ownership – the Euromedia Ownership Monitor (EurOMo),[34] which was created within the framework of the European Democracy Action Plan.[35]

Since the Draft Law introduces structural changes to the Law of Ukraine "On Media", it proposes to add a new Article 23-1, which directly concerns information sharing platforms through which mass information is disseminated, as well as to update Articles 25 and 120 that cover issues of transparency of ownership structure of media service providers. Thus, entities must provide the National Council, upon its request, with information on the ownership structure within a 45-day period. In this case, the term is calculated either from the moment the request is sent, or from the moment such a request is published on the official website of the National Council (and here the question of the appropriateness of the notification arises). In addition, Article 25 clearly states that the absence (in the database of the National Council) of information about the ownership structure or information about the representative in Ukraine is a basis for recognising the ownership structure as non-transparent. It is important that during the period of martial law, an investigation of the ownership structure may also be carried out at the request of state bodies within the security and defence sectors.

Although the requirement to disclose the ownership structure does not directly contradict the DSA, **it is formulated in the Draft Law in a very general way, without any safeguards to protect the interests of platforms and their users**. Thus, the mechanism proposed by the Draft Law does not implement the system proposed, for example, by EMFA or the AVMSD (by analogy). In fact, the only basis for checking the ownership structure is a request from the National Council. Moreover, the lack of a response to the request (for any reason, including if the platform could potentially not have received the request or information about the existence of such a request) automatically leads to the recognition of the ownership structure as non-transparent.

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[28] https://www.meta.com/help/quest/2844070439068158/
[29] https://telegram.org/tos/eu-dsa
[30] https://support.google.com/legal/troubleshooter/13966113?hl=en#ts=13966824
[31] Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix, para 4; EU, Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector, OJ L 245, 22.9.2022, pp. 56–65, Section III
[32] AVMSD, Article 5(2)
[33] EMFA, Article 6
[34] https://media-ownership.eu/
[35] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250

Finally, as already mentioned in the opinion of the Council of Europe on the draft law No 11321,[36] when it comes to the application of Article 120 on the prohibition of the presence in the ownership structure of citizens or legal entities originating from the aggressor state, their presence cannot be a basis for recognising the structure as non-transparent. In particular, because in this case the ownership structure is known to the regulator, but it violates other national restrictions aimed at countering Russian aggression. That is, the violation is not in the non-disclosure of information (procedural), but in the material part of the actions.

It is important to emphasise that restrictions on the ownership structure in peacetime are considered problematic themselves. The Council of Europe Guidelines on media pluralism and transparency of media ownership state that "*restrictions on the extent of foreign ownership of media should be implemented in a non-arbitrary manner*".[37] Therefore, it is necessary to ensure a gradual lifting of such restrictions after the circumstances that caused their emergence have ended.

f. Co-regulation in the Sphere of Platform Regulation (Articles 90, 92, 93 of the Law of Ukraine "On Media")

In general, the co-regulation mechanism in the field of platforms does not contradict the standards of the Council of Europe and the EU. Articles 90, 92 and 93 provide for the possibility of interpreting the provisions of Article 23-1, proposed by this Draft Law, based on the model of the co-regulatory body in the field of media.

However, an important reservation is that co-regulation in the field of media is designed to interpret the rules implementing the AVMSD - an instrument that leaves room for adjustment, adaptation and clarification. At the same time, the DSA, as an EU regulation with direct effect, leaves little room for additional interpretation. Therefore, it is important **to ensure that the co-regulatory Codes do not dilute the content of the rules and do not lead to their interpretation, which can contradict the European acts, including the DSA**.

a. Liability of the Platforms and Restrictions on Their Activities During the Period of Armed Aggression (Articles 114 and 124 of the Law of Ukraine "On Media")

Unlike draft law No 11321, on which the Council of Europe has already issued an opinion,[38] the subject of this analysis does not propose direct mechanisms for blocking platforms. Instead, it provides for two types of response measures that the National Council may resort to in the event of a violation of Article 23-1 by the providers of online platforms. These include the imposition of fines for violations of procedural requirements (such as failure to publish terms of use, lack of a mechanism for verifying the user's age or the absence of a legal representative), as well as referral to law enforcement agencies in the event of a refusal to disclose the ownership structure upon request by the media regulator or the processing of children's personal data for commercial purposes.

In general, a fine is not considered a type of response measure that is contrary to international standards. In particular, among the list of sanctions in Article 52 of the DSA,[39] the amount of the fine is directly mentioned. The ECtHR, in a number of cases concerning the liability of Internet

[36] https://rm.coe.int/lex-06-legal-opinion-ukraine-ua-/1680b5128b
[37] Council of Europe, Recommendation CM/Rec(2018)1, para 3.7
[38] https://rm.coe.int/lex-06-legal-opinion-ukraine-ua-/1680b5128b
[39] DSA, Article 52

intermediaries,[40] considered a fine as a proportionate sanction and assessed the correspondence of its amount to the type and gravity of the violation. A similar approach is followed by the CJEU.[41] However, it is worth noting that fines are difficult to apply to entities that do not fall under Ukrainian jurisdiction. Since most large platforms currently fall into this category, **the mechanism is rather ineffective in terms of practical application**.

At the same time, the problem of imposing sanctions for failure to remove content items upon request of the National Council remains relevant, since such a mechanism does not comply with the DSA (which requires a response to a request, rather than automatic removal of content without additional verification). In particular, in the proposed wording of the Draft Law, the National Council will be able to impose fines without any judicial supervision for each content item not removed upon its request, rather than for the lack of institutional mechanisms for responding to complaints. Such an approach may lead to disproportionate application of sanctions, which would violate international standards.

h. Procedure for the Platforms' Use by the Special Subjects (Article 37-1 of the Law of Ukraine "On Media", Article 24-1 of the Law of Ukraine "On Central Executive Authorities", Article 56 of the Law of Ukraine "On Banks and Banking Activity", Article 11 of the Law of Ukraine "On Cloud Services")

One of the additional restrictions imposed in conjunction with the recognition of the platform's ownership structure as non-transparent or in case of its violation of the provisions of Article 23-1 of the Law "On Media" is a ban on their use by state and municipal authorities, their officials, banks, providers of other financial services, payment organisations and/or participants in payment systems, as well as operators of payment infrastructure services. Akin to that, programmes (software) or services related to the platforms (companies) for which restrictions have been introduced are prohibited from being installed and used on any equipment or electronic means of communication that are used in whole or in part for official purposes (*i.e.* for correspondence, online negotiations, use of state electronic registers, storage of confidential data). It is also prohibited to use cloud services related to such platforms.

In the context of this restriction, as aptly noted in the Council of Europe's opinion on draft law No 11321,[42] several problems arise. First, since the grounds for banning the use of platforms by the entities listed above are not only the non-transparent ownership structure, but also the failure to comply with the requirements of Article 23-1, in theory, the lack of response to a single request from the National Council to remove a post on Facebook or X would be grounds for banning their use by the entire state and financial sectors.

Second, if a similar situation occurs with the failure to remove a single video on YouTube, a ban on the use of related services of such companies will also be activated - in this case, all Google/Alphabet services. This may lead to a situation where all civil servants will suddenly find themselves in a situation where it is impossible to use Google Doc, Google Drive, and even Android

[40] Delfi AS v Estonia, App no 64569/09 (ECtHR, 16 June 2015), paras 160-161; Sanchez v France, App no 45581/15 (ECtHR, 15 May 2023), paras 207-208

[41] Joined Cases C-662/22 and C-667/22, Airbnb Ireland UC, Amazon Services Europe Sàrl v Autorità per le Garanzie nelle Comunicazioni (CJEU, 30 May 2024)

[42] https://rm.coe.int/lex-06-legal-opinion-ukraine-ua-/1680b5128b

devices (since this OS was developed by Alphabet). As a result, the very restriction on the use of certain technologies or services by special entities may comply with international standards, but **the proposed procedure for implementing such a restriction makes it a disproportionate and excessively intrusive measure that can paralyze the work of many government agencies and financial institutions**.

Recommendations

If the main goal of the Draft Law is to restrict Telegram's operations in Ukraine due to its potential connection to an aggressor state, it would be appropriate for the parliament to consider alternative options for regulating the activities of this platform. One of the available mechanisms that is regularly used to restrict the activities of Russian/Russia-backed resources is sanction measures in accordance with the Law of Ukraine "On Sanctions". Such a tool is designed to restrict the activities of foreign entities that may threaten the national security of Ukraine. Unlike the adoption of a new law with comprehensive regulation, the proposed tool is targeted and will be able to address a specific security problem. If the parliament considers such a mechanism, it is also worth performing the necessary accompanying steps:

- review the list of types of sanctions applicable to online resources in the Law of Ukraine "On Sanctions" and supplement it if necessary to ensure that there is a legal basis for imposing a specific type of sanction;
- provide a clear, complete and understandable justification for the application of sanctions in the relevant decree and the State Register of Sanctions;
- take into account the conclusions of the ECtHR in the case of *Boyarov and Others v Ukraine* regarding the restrictions on the Russian platforms VKontakte and Odnoklassniki, which was communicated to the government in 2024 and is currently under consideration.

If this Draft Law aims to introduce comprehensive regulation of platforms in Ukraine, it is recommended to align it with the requirements of the DSA to ensure full implementation of Ukraine's obligations within the EU accession processes. In particular, this involves the following actions:

- internally align the terminology of the Draft Law;
- refrain from introducing new categories of media service providers and mixing legal regimes applicable to media and online platforms;
- ensure the competence of the national regulator to consider issues related to the regulation of online platforms in accordance with the EU and Council of Europe standards, taking into account the constitutional principles of the establishment of such independent regulators and the need to make changes after the end of martial law;
- exclude from the scope of co-regulation such provisions that are not subject to additional interpretation and interpretation at the national level (DSA norms of direct effect);
- align the transparency requirements set out in Article 11 with EU and Council of Europe standards, and ensure the publication of data on the ownership structure in the format of open data and licenses;
- exclude from the grounds for prohibiting the use of platforms by special entities of the public and financial sectors violations of the provisions of Article 23-1, in particular regarding the failure to remove content at the request of the National Council due to the possibility of creating excessive restrictions;
- harmonize the procedure for applying response measures of the national regulator with the case law of the ECtHR, providing the necessary guarantees.