



Council of Europe Project

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

**LEGAL REVIEW OF DRAFT LEGAL AMENDMENTS
ON
THE STATUS AND PRINCIPLES OF ACTIVITIES OF
PARLIAMENTARY BROADCASTING**

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Summary

The Parliamentary Assembly of the Council of Europe (PACE) recommended since back in 1997 that Council of Europe member states are encouraged to create *independent* television channels devoted to parliamentary work.¹

Under both sets of draft legislative amendments to the laws of Ukraine concerning parliamentary broadcasting submitted for the legal review, the “Rada” channel is entirely funded by the state and managed directly by the Verkhovna Rada of Ukraine (the Parliament), making it state media, contrary to the principles of public service media set out in Recommendations of the Council of Europe and endorsed by the European Commission.²

Elsewhere in Europe, although many parliamentary channels are the responsibility of the public service media operator, a number are directly state funded and managed directly by the Parliament. In such cases, the standard format of the content they offer is unfiltered, live coverage or recording of parliament’s legislative activities in plenaries and committees.

The reviewed versions of legal amendments are not aligned with the principles of independence and of public service broadcasting. In addition, the recently introduced amendments to the Law of Ukraine “On Media” allows creation of new media services run directly by the Ministry of Defence of Ukraine³. Looked at together, the amended Law “On Media” and the draft changes to the Rules of Procedure of the Verkhovna Rada of Ukraine propose extended forms of state media and represent a serious reversal of the pro-democratic trends seen in recent years by the Ukrainian authorities.

Given the progress Ukraine has made in reforming its previous state broadcaster into independent Public Service Broadcasting Company of Ukraine (Suspilne), and the constant challenges Suspilne faces due to its limited funding relying exclusively on the state budget, it is not advisable to establish new state media or to broaden the remit of the existing ones.

From the two drafts submitted for the review, the version of the amended Rules of Procedure proposed by the People’s Deputies of Ukraine is preferred ensuring that it does not seek to create new editorially devised programming but limit output to coverage of activities of the Parliament and its committees.

¹ [PACE Resolution 1142 \(1997\) “Parliaments and media”](#), referred to in the Explanatory Memorandum to the draft legislative amendments developed by the People’s Deputies of Ukraine, encourages the national parliaments of member states “11.9 devising means of encouraging the creation of *independent* television channels devoted to parliamentary work, as is the case in several European countries, in the United States and in Canada;”.

² See Chapter “European standards”.

³ See Sub-chapter “Amendments to Article 125 of the Law “On Media””.



1. Introduction

The Law of Ukraine “On the Rules of Procedure of the Verkhovna Rada of Ukraine” (hereinafter “the Rules of Procedure”) provides in Article 3(6) for the state company “The parliamentary TV channel “Rada”” to broadcast the open plenary sessions of the Verkhovna Rada of Ukraine. It further provides that there is a daily broadcast (in days of plenary meetings and carrying out “hour of questions to the Government”) and weekly programs with ensuring equal participation of representatives of deputy fractions in them (deputy groups) and extra fractional People's Deputies of Ukraine.⁴

Following the amendments to the Law of Ukraine “On Media”⁵ and as per the requirement of the amended sub-item 4 of item 34 of Chapter X “Final and Transitional Provisions” of this Law⁶, two draft versions of an amended set of Rules of Procedure have been submitted for the Government’s review. One draft law was prepared by the Ministry of Culture and Information Policy of Ukraine⁷ and the other one by the People’s Deputies of Ukraine.⁸

The Government of Ukraine presented to the Council of Europe a request for an expert legal review of two versions of the draft amendments to the Rules of Procedure regarding the “Rada” channel. Specifically, they asked to assess the draft amendments against such criteria as independence, the presence of public service media attributes, and compliance with European legislation as it pertains to parliamentary broadcasting.

The purpose of this document is therefore to provide an expert review on the proposed amendments. In the introductory part, first, the outline of the most relevant international standards is provided, including the EU legislation and Council of Europe recommendations and resolutions, and, second, the experts provide a short insight into formats of parliamentary audiovisual services in other European states. Then, the analysis of both versions of amendments to the Rules of Procedures is given, and, finally, the experts provide their recommendations on the preferred governance and remit of the “Rada” channel to ensure

⁴ Law of Ukraine No. 1861-VI “On the Rules of Procedure of the Verkhovna Rada of Ukraine”, adopted on 10 February 2010. Available at (last amendments dated 7 September 2023): <https://zakon.rada.gov.ua/laws/main/en/1861-17#Text>

⁵ The amendments to the Law of Ukraine No. 2849-IX “On Media”, adopted on 13 December 2022 (Available at (last amendments dated 2 July 2023): <https://zakon.rada.gov.ua/laws/show/2849-20#Text>), were introduced by the Law of Ukraine “On the introduction of amendments to the Law of Ukraine “On Advertising” and other laws of Ukraine regarding the implementation of the norms of the European legislation into the national legislation of Ukraine through the implementation of certain provisions of the legislation of the European Union in the field of audiovisual advertising (the European Convention on Transfrontier Television, the Directive of the European Parliament and the Council 2010/13/ EU on audiovisual media services of 10 March 2010 as amended by the Directive (EU) 2018/1808 of 14 November 2018), adopted on 30 May 2023. Available at: <https://zakon.rada.gov.ua/laws/show/3136-20#Text>

⁶ The provision stipulates that “The Cabinet of Ministers of Ukraine within three months from entry into force of the Law of Ukraine “On Media” should submit to the Verkhovna Rada of Ukraine for its consideration proposals on the regulation of the status and principles of functioning of the parliamentary broadcasting”.

⁷ Draft Law of Ukraine “On amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine” developed by the Ministry of Culture and Information of Ukraine.

⁸ Draft Law of Ukraine No.10107 “On the introduction of amendments to some laws of Ukraine regarding the peculiarities of coverage of the activities of the Verkhovna Rada of Ukraine by the State Enterprise of Parliamentary TV channel “Rada” under martial law” registered on 3 October 2023. Available at: <https://itd.rada.gov.ua/billInfo/Bills/Card/42899>



compliance with the country's commitment to adhere to European standards regulating freedom of media.

2. European Standards

2.1 Public Service Media

The Recommendation CM/Rec(2012)1⁹ lays down several guiding principles related to Public Service Media's independence, accountability, effective management, responsiveness and responsibility, transparency and openness, and is thus of particular importance.

Its development was guided by challenges arising from transitions of Public Service Media from State to public service, and from traditional broadcasting to digital content delivery.

In its Tier 1 on Structures, the CM/Rec(2012)1 highlights: *"Independence is the core requirement for every public service media organisation. Without demonstrable independence of action and initiative, from government as well as from any other vested interest or institution, public service media organisations cannot sustain their credibility and will lose (or never gain) popular support as a forum for carrying forward the national debate and holding power to account"* (§21).

As for their accountability, Public Service Media are ultimately, and fundamentally, accountable to the public. All accountability relations should be clearly established.

Even if not established as a Public Service Media, the "Rada" channel should be prepared to give account of themselves to different public organisations, including human rights organisations, minority and ethnic groups, any social demographic groups, unions and other specific interest groups.

2.2 State Funding

The Recommendation CM/Rec (2018)1 on media pluralism and transparency of media ownership¹⁰ calls on states to ensure *"stable, sustainable, transparent and adequate funding for public service media on a multiyear basis in order to guarantee their independence from governmental, political and market pressures."* The same recommendation highlights the importance of transparency around the sources of financing of media outlets.

Another document, **the Resolution 1636 (2008)** of the Parliamentary Assembly of the Council of Europe states that member countries should take concrete positive action to promote media pluralism, stressing that state support must be fair. According to the Resolution, *"media freedom in a democracy requires fair and neutral state subsidies to the media" and that an individual state media outlet that is subsidized in a preferential way "could be abused for political influence."*¹¹

⁹ Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, adopted on 15 February 2022, §§ 1-5. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4

¹⁰ Recommendation CM/Rec (2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, adopted on 7 March 2018. Available at: https://search.coe.int/cm/Pages/result_details

¹¹ Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe, adopted on 3 October 2008. Available at: <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17684&lang=en>



There is no specific EU-level legislation that regulates state financial support for the media sector. The proposal of the European Media Freedom Act (EMFA),¹² drafted to safeguard the EU media market and now in the final phase of negotiations,¹³ emphasizes the need for guarantees regarding the independence of public media. Under Article 5 three key obligations for EU member states are determined: ensuring the independence of management and board members within public media organizations, providing adequate funding, and establishing a public media regulator. Furthermore, under Article 24 member states would be obliged to establish common requirements for transparency and non-discrimination in the allocation of public funds for advertising, and for the purchase of other goods and services from the media.

So far, state financial support for the media is governed by the European Commission through the **EU legislation on state aid**. The legislation is aimed at ensuring that state aid and subsidies are governed by clear and fair rules. The Commission is set to intervene in cases where state aid is found to distort competition by giving unfair economic advantages to some institutions and businesses over others.

The Amsterdam Protocol (1997) provides for what is seen as a general exception to the provisions on state aid for public service broadcasting. It says, *“that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”* and states that *“the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.”*¹⁴

When considering whether state aid rules might apply in the case of the “Rada” channel, the European Commission would wish to consider the effect of the channel on competition, and whether there was a well-defined public service remit, as well as transparency of funding.

3. Parliamentary Broadcasting across Europe

The parliament audiovisual services are not unusual in Europe. In the era of the dominance of TV broadcasting they were mostly known as “legislature broadcasters”. Today, several countries have a form of either live broadcasting or online streaming, as well as providing public access to recordings of plenary sessions, committees, press conferences and other events of their parliaments. In many countries these services are provided by the national

¹² EMFA, Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM/2022/457 final.

¹³ Trilogue between European Parliament, the Council of the European Union and the European Commission.

¹⁴ 11997D/PRO/09 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts – Protocol annexed to the Treaty of the European Community -Protocol on the system of public broadcasting in the Member States, adopted on 10 November 1997. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11997D/PRO/09>



public service media (e.g., in Italy by RAI, in Cyprus by PIK 2, in Malta by PBS, in Poland by TVP, in Slovenia by RTV Slovenia, and in Spain by RTVE). These offer a combination of unedited live broadcasts or recordings and edited content as part of their public service programming.

When the audiovisual coverage of their work is organised (also or exclusively) by parliaments themselves, the programming is normally based on the retransmission, live and delayed, of the events (e.g., ARtv, Portugal, Canal Parlamento, Spain), sometimes offered in a form of a multimedia library available at a parliament website (e.g., in Austria, Bulgaria, Denmark, Finland) or as an YouTube channel (e.g. in Belgium, Croatia, Cyprus, Estonia). The standard format is unfiltered – live coverage or recording. Additional productions, such as studio debates and documentaries are rare (e.g., Oireachtas TV, Ireland). The European Parliament also offers the possibility to watch live its plenary sessions, committees' meetings and other events.

Country	Parliamentary TV/online service
Austria	Mediathek des Österreichischen Parlaments
Belgium	LaChambre / BEDeKamerBE / Plenum - Belgian Senate
Bulgaria	Онлайн портал на Народното събрание на Република България
Croatia	Internet TV Hrvatskog sabora / Saborska TV
Cyprus	PIK 2 / CyBC 2 / Youtube channel Βουλής Αντιπροσώπων
Czech Republic	Poslanecká sněmovna Parlamentu České republiky / Senát Parlamentu České republiky
Denmark	Folketinget TV
Estonia	Riigikogu
Finland	Eduskunta webstream / Riksdagens webbsändningar
France	La Chaîne Parlementaire (LCP) / Public Sénat
Germany	Das Parlamentsfernsehen des Deutschen Bundestages / Phoenix / Deutschlandradio
Greece	Τηλεοπτικός Σταθμός της Βουλής των Ελλήνων
Hungary	A Magyar Országgyűlés élő közvetítése
Italy	Rai Parlamento / Rai GrParlamenti / Camera dei Deputati / Senato della Repubblica
Ireland	Oireachtas TV
Latvia	Latvijas Radio
Lithuania	Seimas – tiesiogiai / Atviras Seimas
Luxembourg	Chamber TV
Malta	Parliament TV
Netherlands	NPO Politiek



Poland	TVP Parlament
Portugal	ARTV – Canal Parlamento
Romania	Pagina web a Senatului Romaniei / Canalul de Youtube al Senatului Romaniei / Televiziunea Camerei Deputaților / Canalul de Youtube al Camerei Deputatilor / Televiziunea Romana
Slovakia	MediaPortál NR SR
Slovenia	RTV Slovenija, SLO3
Spain	24 hours – RTVE / Canal Parlamento
Sweden	Sveriges Riksdags webb-tv

Table 1: Parliamentary channels, source: European Parliament¹⁵

4. Analysis of Draft Laws

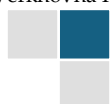
4.1 Version of the People’s Deputies of Verkhovna Rada of Ukraine

The Explanatory Note to the proposed amended Rules of Procedure submitted by the People’s Deputies of Ukraine states that live broadcasting of open plenary sessions of the Verkhovna Rada of Ukraine is limited by the “Rada” channel for the purposes of national security.¹⁶ According to the Note, the aim is to optimise the activity of “the State Enterprise “Parliamentary TV Channel “Rada” by using only online broadcasting means during the period of martial law in Ukraine.”

Under the amendments proposed to Article 3(6) only streaming or “online broadcasting” in live or recorded format is envisaged. The Rada’s activities foreseen for streaming are the open plenary sessions of the Verkhovna Rada of Ukraine, as well as daily (on days of plenary sessions and “hour of questions to the Government”) and weekly programmes with equal participation of representatives of the deputy factions (deputy groups) and non-faction people’s deputies. They are expected to be broadcast on the day when held or created, or when impossible otherwise — in the first week after the event. In addition, of the Rules of Procedure, it provides that during the period of martial law in Ukraine, the service will only be online. Subsequently, by the proposed changes to Article 28 of the Law “On Media”, the “Rada” channel is being removed from the notion of ‘universal media service’ – not just in theory but also in practice – because individuals with no or limited access to the Internet or lower digital literacy skills will be less able to access “Rada” channel’s content. Despite that, the authors of the Explanatory Note find online (live) streaming better aligned with democratic foundations of coverage of activities of parliaments. They refer to the online broadcasting practices observed in the European Parliament, Ireland, Italy, Germany, France, and Sweden.

¹⁵ <https://www.europarl.europa.eu/at-your-service/en/stay-informed/channels-covering-parliaments>

¹⁶ In accordance with the Resolution of the Verkhovna Rada of Ukraine “On Certain Matters of Covering the Work of the Verkhovna Rada of Ukraine of the Ninth Convocation during Martial Law”, dated 6 September 2022.



Besides, the People's Deputies of Ukraine propose an additional amendment to the second paragraph of Article 21(2) of the Law of Ukraine "On Media" regulating the exclusions from the limitations on state ownership of the parliamentary broadcaster, if it does not undertake any 'media' activity which would otherwise require obtaining a licence. This could serve to further differentiate the "Rada" channel from anything which would otherwise resemble an audiovisual media service, if there weren't any additional programmes envisaged apart from live or recorded streaming of the Rada's activities as stipulated under Article 3(6) of proposed amended Rules of Procedure submitted by the People's Deputies of Ukraine. To avoid the possibility of circumvention of democratic standards, it is recommended to remove the possibility of additional programmes.

Of the two draft amendments of Rules of Procedure which have been submitted for the expert review, this draft is considered as more aligned with the relevant European standards. Although, given the establishment of the "Rada" channel as one which is entirely funded by the state and controlled by the Verkhovna Rada of Ukraine remains in danger of being 'state' rather than public service media. This is because, even though the programming output of the "Rada" channel is limited, there remains an element of editorial control exercised not only in the choice and compilation of material, but also in practices such as camera positions and framing. To ensure unbiased coverage, it is recommended to set an internal (inclusive) framework aimed at maintaining the channel's integrity and reliability, reinforcing its commitment to serving the public interest.

4.2 Version of the Ministry of Culture and Information Policy of Ukraine

The draft amendments prepared by the Ministry of Culture and Information Policy of Ukraine add to the tasks of the channel: the *"creation and dissemination of programmes and broadcasts related to law-making activities of the parliament, political, economic, social and cultural issues of state development, as well as issues of science, military-patriotic orientation, cultural-mass character and others; promoting the authority of the Verkhovna Rada in the country and abroad, strengthening inter-parliamentary ties; spread of ideas of parliamentarism, development of civil society institutions, affirmation of Ukrainian national and civil identity, protection of human rights; highlighting the interaction of legislative and executive authorities, other state bodies, local self-government bodies, their officials in the process of exercising their powers within the limits established by the Constitution and in accordance with the laws of Ukraine regarding current problems of state formation and social life, the issue of strengthening legality."*

Furthermore, the version proposed by the Ministry does not limit dissemination to online media but continues to provide an audiovisual media service. It is therefore clear that these amendments seek to give the "Rada" channel responsibility for creating editorial content which, if it were not subject to the explicit exclusion in Article 21(2) of the Law of Ukraine "On Media" (see above) would fall to be regulated, and licensed, by the National Council of Television and Radio Broadcasting of Ukraine (the national media regulatory authority). In other words, under the proposed amendments, it would be indistinguishable from any other regulated media service.



The proposed provisions outlined in paragraphs 6-8 of Article 3 of the Rules of Procedure grant the Verkhovna Rada Secretariat the power to approve the charter, budget, organizational structure, and staff list of the parliamentary broadcaster. Additionally, the Secretariat is authorised to conduct internal financial control and oversee other activities of parliamentary broadcasting. The Head of the Secretariat holds the authority to appoint and dismiss the channel's director. These provisions raise concerns about the "Rada" channel potentially being more state-oriented rather than operating as a public service media entity.

This means that the proposed changes to the Rules of Procedures would create a very clear state media, in breach of Council of Europe recommendations, and at risk of falling foul of the European Commission's rules on state aid.

4.3 Amendment to Article 125 of Law of Ukraine "On Media"

As well as the proposal to turn the "Rada" channel into state media, there is a recent amendment to the Law of Ukraine "On Media" introduced on 30 May 2023 (see above), which creates another state media channel through the Ministry of Defence of Ukraine.¹⁷ Giving a government department responsibility for media output directly contravenes every principle of the Council of Europe's position on public service media. The fact that the proposed media services would only operate during the current period of military aggression does not alter that conclusion as there is no exemption for state media during war time; state media has no place whatsoever in a democracy.

5. Conclusion and Recommendations

From as early as 1997, the Parliamentary Assembly of the Council of Europe recommended the creation of channels devoted to parliamentary work but stipulated that these should be independent.

The issue here is that the "Rada" channel is not independent; it is clearly and totally state-run media. This is particularly problematic when looking at the vision of the channel as set out in the version of the draft amendments to the Rules of Procedure proposed by the Ministry of Culture and Information Policy of Ukraine, which envisages a wide range of additional programming over and above the relay of parliament and its business (or compilations of sessions).

This is problematic not only because it risks undermining the democratic principles which are reinforced through the provision of independent public service media but could also run into problems of State Aid under the European Commission rules.

The proposed solutions are to either:

¹⁷ See Article 125. Media of the Ministry of Defence of Ukraine: "1. During the validity period of Section IX of this Law, the Ministry of Defence of Ukraine has the right to independently or through its institutions create print and online media, as well as to be the founder (participant) of one legal entity that can provide services of one linear audiovisual media and one linear audio media... 2. Information disseminated in the media specified in Part 1 of this Article shall comply with the principles of reliability, balance, completeness and impartiality. Distribution of advertising (except social), pre-election campaigning and referendum campaigning in such media is prohibited. Activities of the media of the Ministry of Defence of Ukraine shall be financed exclusively at the expense of the state budget."



1. Strictly limit the content of any Parliamentary channel (be it online only or also via cable, satellite or broadcast transmission) or other media to broadcasting the work of the Parliament and its committees in session, and official parliamentary business. Additionally, transparent and fair internal protocols, agreed between the members of the parliament, should be developed to prevent biased coverage.
2. Placing responsibility for the parliamentary channel firmly within the remit of the Public Service Broadcasting Company of Ukraine (Suspilne). This would potentially enable a wider variety of associated programming to be shown, but under the independent auspices of the public service media company and its independent supervisory board. In this case, Suspilne's budget would need to be increased to pay for this additional responsibility.

Of the two draft revisions to the Rules of Procedure under consideration, the version of the People's Deputies of Ukraine is considered as better aligned to the relevant European standards ensuring that it does not seek to create new editorially devised programming but limit output to coverage of activities of the Parliament and its committees. Not only does it limit the material to be broadcast to sessions of Parliament, its committees and official business, but it also puts the entire service online only, thereby removing it from the audiovisual sphere of regulation and competition.

It is critical to ensure that Ukraine continue fulfilling its commitments to freedom of expression in service to democracy. The legislative proposal to the Rules of Procedure developed by the Ministry of Culture and Information Policy of Ukraine creates a risk of creation of state-controlled media outputs which is in defiance of Council of Europe principles. Taken together with the recent amendments to the Law of Ukraine "On Media" allowing the Ministry of Defence of Ukraine to create its own media products, it raises concerns that Ukraine is backtracking on the progress achieved on ensuring media independence and strengthening public service media, which *inter alia* was accomplished through the establishment of the Public Service Broadcasting Company of Ukraine

Finally, these or any other attempts to introduce state media should be by all means avoided to adhere to the country's human rights commitments and, hereby, ensuring the freedom of expression.

