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**"Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II"**
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# LEGAL OPINION

on the Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding Ensuring the Accessibility of Audiovisual Media Services (Except for Audio Media Services) for Persons with Disabilities" (Registration No. 16065 of 14 September 2025)

Division for Cooperation 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" 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.

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**Glossary**

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| AVMS | Audiovisual Media Services |
| AVMSD | Audiovisual Media Services Directive |
| COE | Council of Europe |
| CRPD | Convention on the Rights of Persons with Disabilities |
| EBMS | European Board for Media Services |
| EBU | European Broadcasting Union |
| EEA | European Accessibility Act |
| ERGA | European Regulators Group for Audiovisual Media Services |
| EPRA | European Platform of Regulatory Authorities |
| EU | European Union |
| UN | United Nations |
| USL | Ukrainian Sign Language |
| VOD | Video on demand |
| WHO | World Health Organisation |

**Executive Summary**

This Legal opinion was prepared at the request of the Ministry of Culture of Ukraine. It analyses the Draft Law "On Amendments to Certain Laws of Ukraine Regarding Ensuring the Accessibility of Audiovisual Media Services (Except for Audio Media Services) for Persons with Disabilities" (Draft Law No. 16065) with the aim to ensure that it aligned with the relevant European Union acquis as elaborated in the Audiovisual Media Services Directive (AVMS). This Directive was amended in 2018 in order to strengthen the obligations for audiovisual media services (both linear – TV services and non-linear – video on demand (VOD) services) to ensure the accessibility of content.

Amendments to the relevant laws are also key to ensure that Ukraine meets its international obligations with regard to the equal treatment of people with disabilities and guaranteeing their rights: to the exercise of freedom of expression and opinion, to access to information, and to take part in cultural life (as elaborated in the UN Convention on the Rights of People with Disabilities – CRPD).

The proposed amendments are well elaborated and consider the country's international obligations and the legislative and policy developments at the national level in Ukraine, including several Presidential Decrees and the National Strategy for creating a barrier-free environment and on enhancing human rights in Ukraine.

Overall, the Draft Law No. 16065 is well aligned with the Audiovisual Media Services Directive, as amended in 2018. It broadens the scope to include on-demand audiovisual media services. It also follows the logic of requiring a 'continuous and progressive' approach recognising that the change cannot happen overnight but also that the level of accessible content must continuously improve. The proposed amendments follow good international practice in introducing an extended transition period for the audiovisual media services to reach the goal of 90% of content being accessible.

The specific tools for making audiovisual content accessible are outlined and these include the key methods such as subtitling, sign language interpretation and audio description. The proposed amendments also widen the scope to encourage the use (on a voluntary basis) of additional tools that aid accessibility of understanding for people with intellectual disabilities that can be used in some programming. This additional inclusiveness is commended.

These different tools serve different communities: audio description enhances the experience for blind people in relation to drama and film by including additional information regarding what is happening on-screen. It is recommended that the larger and better resourced audiovisual media service providers be required to provide a minimum of content using audio description.

There is a strong emphasis on news and information (and as required under the AVMS Directive access to emergency information) as key content that should be made accessible. It is recommended to make a link in this respect to the rules in the Electoral Code regarding access to information during elections. The recommendations below also emphasise the need to consider the availability of a diversity of content genres to ensure the right of persons with disabilities to 'take part in cultural life'.

A key element of the provisions outlined in the Audiovisual Media Services Directive is ensuring the use of 'proportionate measures.' This requires taking account of a range of distinct characteristics of media services that can cover, for example: size and resources, geographical reach and audience (community, local, national, regional), types of content genres (generalist, news, entertainment, film, sports, children etc.), free-to-air, pay or subscription etc. The proposed amendments list an extensive range of criteria largely reflecting those listed here which will be taken into account in the Rules regarding the provision of accessible content to be developed by the National Council for TV and Radio Broadcasting. The recommendations emphasise that these rules provide clear guidance as to how these criteria will be applied, particularly when determining reduced accessibility requirements or exemptions for smaller, less well-resourced audiovisual media providers or those offering specialised content.

Media service providers will be required to develop action plans, to share these with the National Council for TV and Radio Broadcasting and to report on progress. This is in line with the Directive and European practice.

A key issue which should be highlighted in the amendments to the draft law concerns the importance of consultation and dialogue with organisations representing people with disabilities and media service providers. This is important not just when developing and implementing policy but also to allow for feedback and discussion between these groups. In line with good European practice, it is recommended that the provisions on accessible content include a role for the regulator in promoting such dialogue and consultation

Regarding broader policy approaches and strategies, the Opinion points to various good practices throughout Europe that aim to enhance the volume of accessible content available to audiovisual media services. This relates to introducing incentives and/or requirements in the production of content – particularly where the production of content is supported by public funds. This follows the philosophy of making accessible content part of the normal course of business when producing audiovisual content.

In conclusion, the current version of Draft Law No. 16065 provides a good legal basis for implementation of these requirements. The recommendations provided below are for the most part to identify opportunities for further improvement including good international practice.

## 1. Introduction and context

### 1.1. International and European standards

In 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD).[1] The Convention sets out minimum standards for protecting and safeguarding a full range of civil, political, social, and economic rights for people with disabilities. Signatory states shall ensure that persons with disabilities shall enjoy

[1] Convention on the Rights of Persons with Disabilities (CRPD) https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd

access to cultural materials in accessible formats and enjoy access to television programmes, film, etc. in accessible formats.

- Article 9 of the Convention addresses the broad concept of accessibility including access to information and communication, and information and communication technologies and systems.
- Article 21 addresses the right to exercise freedom of expression and opinion and access to information.
- Article 30 recognises the right of persons with disabilities to take part on an equal basis with others in cultural life.

The Council of Europe Disability Strategy[2] was aligned with both the UN Convention and the Charter of Fundamental Rights of the European Union. It addresses the issue of accessibility which includes (among others) the right to access to information, and the need for accessible political campaigns to promote full participation in public and political life.

The Charter of Fundamental Rights of the European Union states that the EU recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26).[3]

Recent research (2024) in the EU[4] reveals that on average 24% of the national populations in the Member States have some form of disability – which includes disabilities that people are born with and those that are acquired. This also includes physical and cognitive disabilities. Other EU statistics reported that people aged 16 years or over in the EU reported difficulties in seeing (20.3%) and in hearing (11.8%).[5] Sensory disabilities are frequently acquired by aging populations, many of whom have increasing difficulty in hearing or seeing and in managing access to content. Older populations are often a very important section of the audiences for audiovisual media services, particularly the audiences of traditional media such as broadcasting.

With regard to audiovisual media services, the key standards in this area for EU Member States and EU Candidate countries are outlined in the Audiovisual Media Services Directive (AVMSD)[6]. The amendments introduced in 2018 strengthened the obligations for audiovisual media services (AVMS) providers to provide accessible audiovisual media content. EU Member States are now expected to ensure 'without undue delay' that services are made 'continuously and progressively more accessible' through 'proportionate measures.' (Article 7(1)).

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[2] Council of Europe Disability Strategy 2017-2023: https://www.coe.int/en/web/disability/strategy-2017-2023

[3] Charter of Fundamental Rights of the EU: https://www.europarl.europa.eu/charter/pdf/text_en.pdf

[4] EU (2024): Disability in the EU: facts and figures. https://www.consilium.europa.eu/en/infographics/disability-eu-facts-figures/

[5] EU Disability statistics 2022: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics_introduced

[6] Audiovisual Media Services (AVMS) Directive (2010/13/EU) (as amended by the 2018 AVMS Directive (2018/1808)).

Article 7 is further expanded to include obligations on media service providers to report on a regular basis to the NRAs (Article 7(2)). Member States should encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible and communicate these plans to NRAs or relevant bodies (Article 7(3)). Each Member State should establish a point of contact for providing information and receiving complaints regarding any accessibility issues referred to in this Article (Article 7(4)). Finally, Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, made public through audiovisual media services, is also made accessible (Article 7(5)).

### 1.2. Finding and using accessible content

A related piece of EU legislation not addressed in detail here is the European Union Accessibility Act (EAA),[7] which will require a separate piece of legislation. This Act focuses on the accessibility of the environment (work, public space, transport etc.) and barriers to accessing products and services including in the digital world. This covers a range of technological means of accessing content such as websites, online applications, set-top box-based applications, downloadable applications, mobile device-based services including mobile applications and related media players as well as connected television services. It also includes Electronic Programme Guides (EPG), which represent the user interface for access to content. These elements are important in relation to the online content of broadcasters including catch-up TV and on-demand services via their content catalogues. They are also relevant for video-on-demand services (VOD).

The European Broadcasting Union (EBU) has produced important and useful reports and analysis on these issues. In particular they emphasised that the provision of accessible services does not solely depend on broadcasters. The availability of these services depends on the whole end-to-end chain (authoring, exchange/distribution, delivery and presentation).[8] The Electronic Programme Guides (EPGs) of broadcasters, cable, satellite and IPTV operators are also relevant here. To increase findability and awareness of content, the content that is accessible should be labelled with appropriate symbols indicating whether they include subtitles for people with vision impairments, with sign language (in this case Ukrainian Sign Language (USL)) or with audio-description.

The following section provides an overview of the Ukrainian context, relevant national legislation and strategies and a summary of the key elements that were lacking in the legislative framework.

## 2. Legal and policy context in Ukraine

The Draft Law No. 16065 is based on Ukraine's international human rights obligations and an examination of international best practices. It contains provisions aimed at

[7] Directive (EU) 2019/882 on the accessibility requirements for products and services (the European Accessibility Act): and services: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0882

[8] De Jong, Frans. Access Services for digital television, EBU Technical Review, October 2004, tech.ebu.ch/docs/techreview/trev_300-de_jong.pdf

implementing Ukraine's commitments under Articles 396–398 and Annex XXXVII of the EU–Ukraine Association Agreement,[9] particularly regarding the Audiovisual Media Services Directive (AVMSD).

According to the drafters of the text, the Draft Law also takes into account the following:

- Articles 4, 9, 21 and 30 of the UN Convention on the Rights of Persons with Disabilities (see above);
- Articles 10 (freedom of expression) and 14 (prohibiting discrimination) of the European Convention on Human Rights;
- Article 15(3) of the Revised European Social Charter (the rights of people with disabilities to independence, social integration and participation in the life of the community;
- and Articles 19 (concerning freedom of expression) and 26 (prohibiting discrimination) of the International Covenant on Civil and Political Rights.

The draft law is intended to address the limited accessibility of television programmes and on-demand audiovisual content for persons with disabilities. It situates the issue within the constitutional guarantees of equality and access to information, in particular Articles 21, 22, 24, 26 and 34 of the Constitution of Ukraine. The main reason identified for this problem is the absence of an adequate legal framework for regulating media accessibility.

### 2.1. Aligning the legislative framework with the Audiovisual Media Services Directive

Ukraine's existing legislation, including the Laws "On Media", "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine", "On Public Media of Ukraine", "On the International Broadcasting System of Ukraine", and "On Advertising", contains outdated provisions, legal gaps and inconsistencies that hinder access to programmes for persons with disabilities.

It is recommended to adjust Article 23(3) of the Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine." This states that (among others) broadcasters should make their content accessible 'in accordance with the procedures and conditions established by the Cabinet of Ministers of Ukraine'. This provision is not in compliance with Article 92 of the Constitution of Ukraine, which stipulates that human and citizens' rights and freedoms and the guarantees thereof, the fundamental duties of citizens, the legal foundations and guarantees of entrepreneurship, the principles of civil liability, as well as offences and the corresponding liability, shall be determined exclusively by law. Hence, this provision should refer to the relevant laws ('On Media', 'On the Foreign Broadcasting System of Ukraine', 'On Public Media of Ukraine' and other laws).

The Law "On Advertising" includes provisions on 'Social Advertising', which is understood as public interest advertising (potentially covering a broad range of topics). Hence this law needs to be adapted to require accessibility of this content. There is also

[9] EU–Ukraine Association Agreement: https://eur-lex.europa.eu/eli/agree_internation/2014/295/oj/eng

a reference to ‘messages from public authorities’ on the Law “On Public Media of Ukraine” that needs to be adjusted in a similar way.

Regarding the Law of Ukraine “On Media”, the drafters of the amendments noted that it contains legal gaps and inconsistencies that reflect the fragmented, unclear and uncoordinated nature of the existing provisions. In particular, the Law does not impose a general obligation on audiovisual media service providers (excluding audio-only services) to make their programmes accessible to persons with disabilities. As participation in co-regulation under Article 92 is voluntary, this mechanism cannot substitute for minimum accessibility requirements established by law. The Draft Law No. 16065 seeks to address this gap by establishing such requirements at the legislative level, while authorising the National Council for TV and Radio Broadcasting (the National Council) to adopt binding rules specifying the procedures and conditions for their implementation. The Draft Law would also bring the development and approval of technical codes (rules) on accessibility within the scope of co-regulation under Article 92.

In addition, the Law of Ukraine “On Media” needs to establish a procedure for approving action plans by the National Council and give them the powers to do so and to develop and approve codes (rules). The amendments also introduce consistency regarding terminology in the legislation.

### 2.2. Relevant policies

Media accessibility for persons with disabilities has been identified as a national policy priority under several Decrees of the President of Ukraine, including from 2020 “On Ensuring the Creation of a Barrier-Free Environment in Ukraine”[10], and from 2021 “On the National Human Rights Strategy”[11].

Also of relevance is the Order of 2021 “On Approval of the National Strategy for Creating a Barrier-Free Environment in Ukraine until 2030”.[12]

These measures form part of Ukraine’s broader policy on media accessibility under the “Without Barriers” initiative led by First Lady Olena Zelenska.

As noted above, Article 7(1) of the AVMSD requires Member States to ensure, through proportionate measures, that media service providers progressively and continuously make their services more accessible to persons with disabilities. Accessibility measures include subtitling, audio description and sign language interpretation.

With regard to the European Accessibility Act discussed above, these requirements have applied since 28 June 2025, subject to the applicable transitional provisions and exemptions. These requirements address the accessibility of user interfaces and navigation, as well as the transmission, synchronisation and user control of accessibility components, including subtitles, audio description and sign language interpretation.

[10] Presidential Decree No. 533/2020 of 3 December 2020 “On Ensuring the Creation of a Barrier-Free Environment in Ukraine”

[11] Presidential Decree No. 119/2021 of 24 March 2021 “On the National Human Rights Strategy”,

[12] Cabinet of Ministers Order No. 366-r of 14 April 2021 “On Approval of the National Strategy for Creating a Barrier-Free Environment in Ukraine until 2030” (as amended by Order No. 294-r of 25 March 2025).

While Directive 2010/13/EU establishes obligations concerning the accessibility of audiovisual media services, Directive (EU) 2019/882 addresses the accessibility of products and services through which users access them.

Ensuring the accessibility of audiovisual media services is essential to guaranteeing equal access to information for persons with disabilities. In this context, the Draft Law should contribute to Ukraine's efforts to fulfil its international human rights obligations and progressively align its audiovisual media legislation with EU law. Further approximation to EU accessibility requirements, including those established by Directive (EU) 2019/882, would support the adoption of accessible technologies, improve competitiveness and facilitate access to new markets.

The Draft Law No. 16065 was developed to implement the National Strategy for Creating a Barrier-Free Environment in Ukraine until 2030, specifically subparagraph 2 of paragraph 20 of its 2025–2026 Action Plan[13], as well as the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities until 2025.[14]

## 3. Assessment of the Draft Law

The stated objective of the Draft Law is to establish a legal framework for media accessibility to ensure the full and equal enjoyment of human rights and fundamental freedoms by persons with disabilities, particularly the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others.

The key aims of the Draft Law have been clearly articulated above in relation to both international and European standards and rules and with regard to the national legal and policy context.

### 3.1. Scope of the law

In general, such regulations are focused on ensuring access to content for people with 'sensory disabilities' i.e. a visual or hearing impairment. It may be useful for the Draft to clarify this with reference to the Recital (paragraph 22) of the Directive EU 2018/1808[15] which amended the Audiovisual Media Services Directive. At the same time, the Draft Law (see also under 3.3) includes a voluntary option to use additional tools that would aid in the accessibility of content for people with intellectual disabilities making the scope of the provisions even more inclusive.

The scope of the Draft Law aims to ensure that the relevant legislation covers both linear (broadcasting) and non-linear (VOD) services in line with the goal of the AVMSD to create a more level playing field in terms of regulation of these services. As the majority of broadcasters also have an online presence with catch-up TV services (services that allow viewers to watch programmes they missed after their original broadcast, usually for a

[13] Cabinet of Ministers Order No. 374-r of 25 March 2025.

[14] Cabinet of Ministers Order No. 285-r of 7 April 2021.

[15] DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities.

limited period of time, for instance - MEGOGO, SWEET.TV and Kyivstar TV), it has also been the case that many countries require broadcasters to carry the accessibility onto their online platforms.

### 3.2. Issues related to jurisdictional criteria and foreign services

Article 45 in relation to the obligations discusses also exemptions. It is not entirely clear what is meant by this section whereby the following are exempted:

'*foreign linear media, except for versions of foreign linear media presented in more than five countries, the content of which meets the requirements of the European Convention on Transfrontier Television and the legislation of Ukraine, provided that such versions of foreign linear media broadcast exclusively in the state language.'*

This would suggest that specific foreign media are also included under the legislation – foreign media available in more than five countries where content meets the requirements of the European Convention on Transfrontier Television and they broadcast in Ukrainian.

It would be difficult to regulate services that are not in the jurisdiction of Ukraine. It is recommended that the clearly distinguish between foreign media service providers falling under the jurisdiction of Ukraine and those falling under the jurisdiction of another state. It is not sufficient for a foreign media service to be available in Ukraine, or to broadcast exclusively in the state language, to establish that it falls within the jurisdiction of the Ukrainian regulatory authority. The relevant jurisdictional criteria should be clearly specified, taking into account the applicable European standards, including the principles reflected in Article 2 of the Audiovisual Media Services Directive.

If it is the case that the 'foreign linear media' referred to actually means 'media targeting foreign countries' but established in Ukraine, then there is not an issue regarding jurisdiction.

### 3.3. Obligations to provide accessible content

The amendments introduced by the Draft Law require television broadcasters and on-demand audiovisual media service providers, regardless of their form of ownership or institutional affiliation, to ensure that programmes are accessible to persons with disabilities through subtitling and/or sign language interpretation and/or audio description. Audiovisual media service providers (excluding audio media service providers) may also voluntarily use other methods to make programmes accessible, including plain language and easy-to-read formats which enhance accessibility in programmes that are aimed at people with intellectual disabilities. This expansion of the scope is highly commended.

However, it is recommended that where media service providers voluntarily use these other methods, it is made clear that this is without prejudice to the providers' obligations to ensure that programmes are made accessible to persons with disabilities through subtitling and/or sign language interpretation and/or audio description and to make their services continuously and progressively more accessible to persons with disabilities through proportionate measures, in line with Article 7 of the Audiovisual Media Services Directive (AVMSD).

### 3.4. Continuous and progressive approach

The key aim of the Directive is that Member States should ensure 'without undue delay' that services are made 'continuously and progressively more accessible' through 'proportionate measures.' A 2019 report for the European Platform of Regulatory Authorities (EPRA) confirmed that an overall gradualist approach of increasing quotas on an annual basis has been used in a significant majority of European countries to align with the continuous and progressive requirement of the Directive.[16]

Five years after the Law becomes applicable, accessible programmes must account for at least 50% of a television broadcaster's total weekly programming. For on-demand audiovisual media service providers, accessible programmes must represent at least 50% of each programme catalogue made available to users. Ten years after the Law enters into force, these minimum accessibility requirements will increase to 90%.

The Draft Law therefore follows good international practice in introducing an extended transition period for the audiovisual media services to reach the goal of 90% of content being accessible.

### 3.5. Proportionate measures

'Proportionate measures' are also a key part of the requirement. The European Regulators Group for Audiovisual Media Services (ERGA) - predecessor to the European Board for Media Services (EBMS) – conducted a review of measures in European countries in 2021. They noted that each country had already implemented various approaches to ensure that measures were proportionate.[17] Distinctions were made between types of accessibility service techniques, the levels of obligations on different types of services and programming etc.

More specifically regarding audiovisual media services, some countries have different requirements for public versus private media, while others will treat them the same. In some countries the focus is on audience and turnover (impact, reach and market power). Generalist and thematic channels may be treated differently or 'free to air' and 'pay' broadcasters and of course, regional and local channels may have less obligations than national audiovisual media services.[18] Decisions on how to approach this tend to be country specific and reflect the nature of the national markets.

The Draft Law addresses this issue in several places: specific requirements are outlined for local public media and community media. There are also a range of criteria (under 45 [1] (5) to be taken into consideration with regard to the rules including (in summary): 1)

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[16] See EPRA (2019, pp3-4): Working Group III: Update on Accessibility of TV and on-demand audiovisual media services. An Overview of Regulatory trends: background document. By Deirdre Kevin, Commsol. https://cdn.epra.org/attachments/files/3611/original/WG_III_Update_on_Accessibility_of_TV_and_on-demand_audiovisual_media_services_vfinal_181219.pdf?1576675230

[17] ERGA (2021): Report: New rules on accessibility (Article 7.1) - A common understanding of 'proportionate measures: https://media-board.europa.eu/document/download/03a38fe5-7f18-4ac8-99a7-b7f5a532c4c0_en?filename=ERGA-SG1-Report-Article-7-accessibility.pdf

[18] See EPRA (2019, pp4-6). See also 'Accessibility measures as implemented by AVMS providers for persons with disabilities, European Audiovisual Observatory, Strasbourg, 2023' https://rm.coe.int/accessibility-measures-as-implemented-by-avms-providers-for-persons-wi/1680aefb42

territorial category and coverage area; 2) types of audiovisual media services and entities; 3) the volume of distribution of national and European products; 4) obligations to ensure minimum distribution volumes of programs aimed at a specific audience or having a specific thematic focus; 5) the scope of programs related to events, common interests of the relevant community(ies) or relevant region or area; 6) broadcast format; 7) the amount of justified expenses related to ensuring the accessibility of programs; 8) financial and technical capabilities; 9) the volume of advertising information (including advertising distributed) and the volume of advertising information (including advertising) permitted for distribution (distribution).

These seem to partially align with the typical distinctions outlined above. Although perhaps already foreseen, it would be useful to organise these types of media in the first instance according to size, reach and market share (major national players down to local and community). It may then be helpful to consider 'generalist' (all content) versus 'thematic' and 'communities of interest.'

### 3.6. Specific types of content

Specific content is highlighted as being crucial such as news and current affairs, social advertising and government messages. Related to this, it is recommended that the Draft law more clearly indicated the need to have election campaign advertising or information and programming included as important content (the need for accessible political campaigns to promote full participation in public and political life),[19] reinforcing the existing requirements under Article 55(7) of the Electoral Code and ensuring their continuity within media legislation.

Entities holding exclusive broadcasting rights to events of major public interest should make this content accessible.

It is important to ensure that people with sensory disabilities have access to a broad variety of content from the outset. It is recommended that a factor to consider in developing the rules is that people with sensory disabilities should have access to a wide range of genres beyond news and information such as drama, film, entertainment, children's programming, sport etc.

It is noted that the Draft Law requires that accessible content is identified and marked in the programme schedules and catalogues. This reflects best practice in Europe.

### 3.7. Types of measures

The Draft Law mentions the three main types of accessibility measures - subtitles, sign language and audio description - but does not assign particular preferences for any of these. Subtitles generally tend to be the most common approach partly also as they are cheaper and easier to produce.

However, these do not serve the community of people with blindness or vision problems. In the drafting of the rules, it is recommended to consider that some of the major players (larger national channels - public, state and private) could have a minimum of offers (particularly of film or drama) that includes audio description. With regard to sign

[19]Council of Europe Disability Strategy 2017-2023: https://www.coe.int/en/web/disability/strategy-2017-2023

language interpretation, it would also be useful to ask the major players to provide this on a minimum basis around news broadcasts and important government statements. In fact, many governments throughout Europe retained this approach after the Covid-19 pandemic.

### 3.8. Action plans, reporting and point of contact

An important element of the Directive is the development of action plans. While the provisions of the Directive states that Member States should 'encourage' AVMS to develop action plans, recent research reveals that 18 countries have made these mandatory.[20] Reporting is mandatory in all countries with a range of different approaches taken including guidance on the content of the report. The Draft Law includes these measures, and both are mandatory. Although the Draft Law does not specifically mention this, it can be assumed that the media regulator – the National Council of Ukraine of TV and Radio Broadcasting – is the point of contact. It is recommended that the Draft Law clarifies that the National Council is the contact point, as outlined under Article 7 (4) of the Directive. It may be useful to state this and to state that the National Council will also have a web page with information and a contact email for information inquiries and complaints.

It is noted that time frames for dealing with complaints are not detailed in the Law of Ukraine on Media. It is recommended that the Rules to be elaborated by the National Council of Ukraine of TV and Radio Broadcasting should provide more detail on the procedure for complaints.

## 4. Dialogue and consultation

There is a need for the Draft Law to recognise the importance of dialogue and consultation with representative organisations of people with disabilities and with the media service providers. In the 2019 EPRA study it was noted that many regulatory authorities held:

*'regular meetings with stakeholders including industry, user groups, and representatives of relevant associations. These meetings may have various purposes: to raise awareness, to inform the industry of the user needs, to promote direct dialogue, and to consult with stakeholders when obligations are under review'.*[21]

This reflects the internationally accepted philosophy of engagement with people with disabilities and their representative organisations in the expression 'nothing about us without us.'[22]

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[20] Accessibility measures as implemented by AVMS providers for persons with disabilities, European Audiovisual Observatory, Strasbourg, 2023' page 20.
https://rm.coe.int/accessibility-measures-as-implemented-by-avms-providers-for-persons-wi/1680aefb42

[21] Examples were noted in: CSA-BE, ES (CAC/CNMC), DE, FR, GB, GR, IE, MK, PT, SE

[22] This is a term widely used for many years in relation to the participation of people with disabilities in decision-making and policy discussions. See for example the World Health Organisation website: Nothing about us without us: centring organisations of persons with disabilities in health decision-making processes. https://www.who.int/news-room/events/detail/2026/05/07/default-calendar/nothing-about-us-without-us--centering-organisations-of-persons-with-disabilities-in-health-decision--making-processes

Consultation with these stakeholders should be included in the co-regulatory structure and/or as a priority in any public consultation.

The European Audiovisual Report from 2023 identified a requirement for AVMS to consult and open dialogues with these stakeholders in several countries.[23] In other countries, the regulator holds annual meetings with these groups and/or involves them in all areas of consultation.[24] In Italy, technical accessibility rules are developed in consultation with representative organisations, AGCOM, and the AVMS providers.[25]

The most constructive approach in the first instance would be for the regulator to facilitate dialogue and consultation with representative groups and AVMS via joint annual meetings.

## 5. Other issues for consideration

There are several elements to the promotion of accessible content and the regulation of accessible content that are worth highlighting. While not part of the AVMSD requirements, these other issues are important for successful implementation of obligations in this area.

### 5.1. Issues of cost and technological developments

It is important to consider concerns regarding the cost of providing accessible content. This can be somewhat mitigated in relation to exemptions for services with low turnovers/resources and/or low audience reach or shares. It is also key to encourage collaboration and the sharing of resources, information and expertise.

There are a range of interesting collaborative approaches in Greece and Slovenia where content is shared via collaboration developing in web portals, aggregating content and sharing content. The UK has established a system of co-operation via a trust (British Sign Language Broadcasting Trust) allowing broadcasters to contribute to specific projects for the production of accessible content (with sign interpretation) in lieu of certain quota requirements.

The Swedish Broadcasting Authority has developed an area on its website in order to disseminate knowledge and best practice to further assist small players with limited resources. Here the broadcasters can find the following: information about different access technologies; information from players who have experience in promoting access to TV programmes through various techniques; and information on disability organisations for consultation and dialogue purposes. The European Broadcasting Union is also an excellent source for information on technological advances to help increase accessibility of audiovisual content. [26]

Several countries have grants and subsidies to support the provision of access services for audiovisual content. There are also policies in relation to media funds and film funds

[23] Austria, Czech Republic, Denmark, Spain, Italy and Latvia. VOD services must consult these bodies in Ireland. From 'Accessibility measures as implemented by AVMS providers for persons with disabilities, European Audiovisual Observatory, Strasbourg, 2023'

[24] France, Ireland, Lithuania, Portugal, Sweden, From EAO (2023) as above.

[25] EAO (2023).

[26] EBU (Accessibility Technology): https://tech.ebu.ch/groups/accessibility-media-access-technology

that aim to maximise the amount of content produced with public money that have access services built in.

Public funding of audiovisual production requires the inclusion of access services in Germany under federal film funding, the final version of the film must be available with German audio description and with German subtitles.[27] This is becoming common practice in other countries for film funding (for example UK, Slovenia, Ireland). In Ireland the television production funding scheme (managed by the regulator) requires that all funded production must make provisions for subtitling. Funding is available to applicants who wish to provide Irish Sign Language and/or audio description services.[28]

For several public funding schemes, the inclusion of access services in the proposal is a positive criterion in the selection of projects. This includes the Croatian Media Fund managed by the Electronic Media Agency. Likewise, in France, several of the audiovisual production funds consider plans to make an audiovisual work accessible as an important criterion in the decision to award funding in the support for digitisation of a variety of works. The French have a range of schemes for promoting the accessibility of works whereby they directly fund the creation of audio description and subtitling (on feature films). Eligible costs include both the creation of the subtitles and of the audio description, and the transfer of the data to all digital distribution platforms: television, video and video on demand.[29] These are just some of many funds encouraging or mandating accessibility of the funded product.

It is highly recommended that strategies and action plans of the regulator and future discussions in this area promote the concept that all publicly funded film, audiovisual and media content be encouraged (via a scoring criteria) or mandated to include accessibility measures in the production.

## 6. Conclusion and recommendations

Overall, the Draft Law No. 16065 amending a range of other laws in order to implement Article 7 of the AVMSD is well aligned with the Directive and for the most part with established best practice in Europe. It is important that future rules developed by the regulator are precise and detailed in order to provide clarity for the audiovisual media services. Therefore, the current version of Draft Law No. 16065 provides a good legal basis for implementation at this stage.

The recommendations below are mainly intended to identify opportunities for further improvement including good international practice. There are just a couple of areas where further detail (on contact points and on complaints) and some additional clarities (for example on foreign media) are needed in the draft amendments to ensure legal clarity. Overall, it is recommended that the law and its implementing Acts aim to ensure a diversity of content is increasingly made available to people with disabilities.

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[27] German Film Fund Guidelines: https://www.ffa.de/german-federal-film-fund-dfff-i

[28] Ireland Sound and Vision : https://www.cnam.ie/app/uploads/2023/11/SchemeSoundVision4.pdf

[29] CNC website on accessibility measure funding: https://www.cnc.fr/cinema/accessibilite-des-oeuvres-et-des-salles-aux-personnes-en-situation-de-handicap_143350

### 6.1. Regarding the current amendments

- Including non-linear (VOD) services within the scope of the relevant legislative framework is in line with the goal of the AVMSD to create a more level playing field in terms of regulation of these services. It is also important to consider requiring broadcasters to provide this accessible content on their online platforms.
- There is still a lack of clarity in relation to foreign services as to whether it is intended that certain types of foreign media be regulated. It may be difficult to regulate and enforce obligations in respect of services that fall outside of Ukrainian jurisdiction. It is recommended to reconsider this clause (Article 45[1] (2.3) regarding exemptions). There may be a confusion in the terminology where this type of 'foreign media' actually refers to 'media that targets foreign markets' and are established in Ukraine. It is possible that the provision is only confusing when translated to English.
- The Draft Law follows good international practice in introducing an extended transition period for the audiovisual media services to reach the goal of 90% of content being accessible.
- The rules to be developed by the National Council should provide clear guidance on how the criteria already set out in Article 45[1] of the Draft Law will be applied, particularly when determining reduced accessibility requirements or exemptions for smaller, less well-resourced media providers or those offering specialised content.
- The Draft Law also pays attention to the need for proportionate measures with a list of criteria to be taken into account regarding the nature of various audiovisual media services. The list appears to align with the common considerations in this area. It is recommended to apply obligations according to types of AVMS services rather than on a case-by-case basis (focus on size and resources and audience reach) and types of content (generalist, thematic, specific communities of interest etc.)
- Regarding key types of content, alongside specific content such as news and current affairs, social advertising and government messages, it is important to emphasise content around elections such as election campaign advertising, information and programming as there is a need for accessible political campaigns to promote full participation in public and political life for people with disabilities, reinforcing the existing requirements under Article 55(7) of the Electoral Code and ensuring their continuity within media legislation.
- It is recommended to clarify the concept of 'sensory disabilities' i.e. a visual or hearing impairment reference to the Recital (paragraph 22) of the Directive EU 2018/1808[30] which amended the Audiovisual Media Services Directive.
- It is also recommended when elaborating Rules and providing guidance for the development of action plans, that the National Council include the need to ensure that the communities of people with sensory disabilities will have access to a broad variety of content from the outset.

[30] DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities.

- Regarding the types of measures used, it is important to consider how the community of people with blindness or vision problems should be served via audio description and it is recommended that some of the major players (larger national channels - public, state and private) could be required to have minimum offers (particularly of film or drama) that includes audio description.
- It has been noted that the Draft Law includes a voluntary option to use additional tools in some programming that would aid in the accessibility of content for people with intellectual disabilities making the scope of the provisions even more inclusive. This voluntary approach does not however replace the obligations regarding the key tools outlined above (sign language interpretation, subtitles and audio description).
- In line with good European practice, the provisions on accessible content should include a role for the regulator in promoting dialogue and consultation with representative organisations of people with disabilities and media service providers.

### 6.2. Additional recommendations

- In line with the growing practice in Europe, it is recommended that strategies and action plans of the regulator and future discussions in this area promote the concept that all publicly funded audiovisual and media content be encouraged (a scoring criteria) or mandated to include accessibility measures in the production.
- In addition, the encouragement of co-operation between media services and the sharing of accessible content between them is recommended. This could include the establishment of a web page that links to useful resources, content and information on technological innovations in the field.