



4.7. Montenegro (ME)²¹⁵ (Country report A²¹⁶)

Disclaimer

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In addition, the analyses presented in this report cannot in any way be considered as representing the point of view of the members of the European Audiovisual Observatory or of the Council of Europe.

KEY FINDINGS

- Sections of the media legislative framework (the Law on Media and the Law on the Public Service Broadcaster) in Montenegro were updated in 2020. These laws, and the various drafts of the new Law on Audiovisual Media Services have been subject to a number of expert reviews. In October 2021, the government established a Working Group for Amendments to Media Laws (the above laws and the Draft Law). In December 2022 there was a public consultation on the Draft Law.
- Following additional and positive review by the Council of Europe, the Working Group continued to work on the Draft Law until May 2023, the registration of which with the Parliament is still pending. The adoption process to finalise the alignment with the 2018 AVMS Directive (2018/1808) has indeed been delayed due to Parliamentary elections. The Montenegrin President issued a Decree on 14 March 2023 dissolving Parliament, and elections took place on 11 June 2023.
- A media strategy was adopted in September 2023 for 2023-2027 to enhance the environment for free and professional journalism. According to the Work Plan for 2024 of the new formed government, adoption of the Law on Audiovisual Media Services is planned for the second quarter of 2024.

²¹⁵ The factsheet on Montenegro incorporates the feedback received from Jadranka Vojvodić, Deputy Director/Head of the Legal and Finance Department at the Agency for Electronic Media (AEM), during the checking round with the national regulatory authorities.

²¹⁶ Factsheet A outlines the findings of Questionnaire A in relation to Group I countries, which includes Montenegro.



- By December 2023, the Draft Law was not adopted and the European Commission temporarily suspended Montenegro's participation in the MEDIA and Cross strands of the Creative Europe Programme.
- The general principles and key values examined in this factsheet are all addressed in the national legislative framework. Rules on transparency of media ownership are quite strong.
- The feedback from the national expert provides some insight into challenges with regard to freedom of expression in practice, and regarding the institutional capacity of the national regulatory authority (NRA).
- The list²¹⁷ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.7.1. Introduction

In the context of this research, Montenegro is part of the Group I countries. Countries in this Group that fully participated in the 2014-2020 Programme may fully participate in the Programme's MEDIA strand and CROSS strand on a provisional basis if they can show that they have taken tangible steps to align their national law to the Audiovisual Media Services Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (hereinafter the AVMS Directive or AVMSD). In order to continue to participate in the Programme beyond 31 December 2022 they needed to have fulfilled the conditions set out in the AVMS Directive.

In 2006 Montenegro's Parliament declared independence from the State Union of Serbia and Montenegro. In 2008, the new country applied for EU membership and accession negotiations with Montenegro started on 29 June 2012.²¹⁸

4.7.1.1. Relevant framework: current status and developments

The table below outlines the relevant national legal framework related to the audiovisual sector, including mainly those acts of most relevance to the issues addressed in this factsheet. It is important to note that this factsheet does not outline the national rules related to the entire AVMS Directive, but focuses rather on a selection of issues: definitions, jurisdiction, freedom of reception and retransmission, and a range of general principles and key values including freedom of expression, independence of the national regulatory

²¹⁷ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

²¹⁸ https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/montenegro_en



authority (NRA), the protection of minors, the promotion of the rights of people with disabilities to access audiovisual content, the transparency of media ownership, and also provisions regarding European works, audiovisual commercial communications and video-sharing platforms (VSPs).

All relevant links appear in this first table. Secondary legislation such as rulebooks and codes, where directly relevant to the issues addressed in this factsheet, are included below.

Table 106. Legal framework

Title	Status	Relevance	Link
<i>Ustav Crne Gore</i> /Constitution of Montenegro	In force	Regarding fundamental rights	In Montenegrin: https://api.skupstina.me/media/files/1605826428-ustav-crne-gore.pdf In English: https://www.predsjudnik.me/ustav_en.pdf
<i>Zakon o medijima, 2020</i> /Media Law, 2020	In force	Freedom of the media, media ownership, transparency of media advertising, protection of media pluralism, right of reply, etc. for all media outlets	In Montenegrin only: https://aemcg.org/wp-content/uploads/2011/08/Zakon-o-medijima-1.pdf
<i>Zakon o elektronskim medijima, 2010</i> /Electronic Media Law, 2010 Amended 2011, 2013, 2016, 2017 and 2020	In force	Regulates the audiovisual media sector Establishment and functions of the NRA	In Montenegrin: https://aemcg.org/wp-content/uploads/2017/12/Zakon-o-elektronskim-medijima-2.pdf In English: http://aemcg.org/wp-content/uploads/2011/11/Electronic-Media-Low-17.08.2016.pdf
<i>Zakon o nacionalnom javnom emiteru Radio i Televizija Crne Gore, 2020</i> /Law on National Public Broadcaster Radio and Television of Montenegro, 2020	In force	Law regulating the public service broadcaster	In Montenegrin: https://aemcg.org/wp-content/uploads/2016/08/Zakon-o-nacionalnom-javnom-emiteru-Radio-i-Televizija-



			Crne-Gore-04.08.2020.pdf
<i>Krivični Zakonik Crne Gore/ Criminal Code of Montenegro (2003). Amended 2004, 2006, 2008, 2010, 2011, 2013, 2015, 2017, 2018, 2020 and 2021</i>	In force	Criminal Code	In Montenegrin: https://aemcg.org/wp-content/uploads/2017/07/Krivicni-zakonik-Crne-Gore-08.03.2021.pdf In English (amendments to 2013 only): https://www.icj.org/wp-content/uploads/2013/05/Montenegro-Criminal-Code-2003-eng.pdf
Draft Laws			
<i>Predlog Zakona o AVM uslugama/Proposal – Draft Law on Audiovisual Media Services (AVMS)</i>	DRAFT Awaiting registration at Parliament	Draft Law to align the legal framework with the 2018 AVMSD and regulate the audiovisual media sector and the establishment and functions of the NRA	In Montenegrin: https://www.gov.me/dokumenta/70a78b3e-f672-4953-81fd-997b257efaaf
Secondary legislation			
Rule Book on Programme Standards in Electronic Media, Article 2 (a) ²¹⁹	In force	Programme standards	In Montenegrin: https://aemcg.org/wp-content/uploads/2020/04/Pravilnik-o-programskim-standardima-u-elektronskim-medijima-06.02.2019.pdf

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

In 2020, Montenegro passed two laws: the Law on Media and the Law on the National Public Broadcaster. At that time, several international experts and local civil society organisations expressed some reservations regarding both laws. These included: concerns regarding the provisions on the protection of sources (in the Law on Media); the provision that self-regulation would be funded via the media pluralism and diversity fund (managed by the Agency for Electronic Media of Montenegro – AEM); and rules governing the

²¹⁹ *Pravilnik o Programskim Standardima u Elektronskim Medijima*



dismissal of members of the *Radio Televizija Crne Gore* (RTCG) Council, among others.²²⁰ An expert analysis of the two laws was carried out for the Council of Europe²²¹ highlighting the above issues and providing recommendations for changes in the laws. At the same time, the government, prepared a Draft Law on AVMS in order to align the legal framework with the 2018 AVMS Directive. A further expert analysis on this Draft Law, provided recommendations for improvements of this draft.²²²

In 2020, an updated Draft Law on AVMS was the subject of an expert analysis to assess the alignment of the law with European standards. An additional purpose of this review was to assess the alignment of the Law on Media and the Law on the National Public Broadcaster – Radio and Television of Montenegro (already adopted in 2020) with the Draft Law on AVMS.²²³ While the experts expressed the view that the majority of the concerns highlighted in earlier reviews had been addressed, a few issues remained unresolved: including, *inter alia*, further clarity in the provisions on freedom of reception and retransmission and with regard to derogations; the need to strengthen obligations for the services with regard to reducing the exposure of minors to audiovisual commercial communications (ACCs) for foods high in fat, salt or sugar (HFSS), and to strengthen provisions to ensure accessibility of content for people with disabilities, in line with the 2018 AVMS Directive; and the need to fully align the legal framework regarding the provisions on VSPs with the 2018 AVMS Directive.

In October 2021, a Working Group for Amendments to Media Laws (that is, all of the above laws and the Draft Law) was formed. It is worth noting that this Working Group was highly inclusive, involving 25 members and that the Group met on 25 occasions over the course of a year to work on the amendments. The Working Group completed its work in October 2022, after which the laws were again submitted for review to the Council of Europe. Following this additional and positive review, the Working Group continued working on a final Draft Law, which has not yet been adopted (status December 2023). The Montenegrin President issued a Decree on 14 March 2023 dissolving Parliament, and elections took place on 11 June 2023. This delayed the finalisation of the process of amending the media legislation: According to the Action Plan for 2024,²²⁴ the adoption of the Draft Law on AVMS could take place by the end of 2024.

²²⁰ See for example: <https://monitor.civicus.org/updates/2020/09/16/new-law-seeks-threaten-media-freedom-journalists-face-attacks/>

²²¹ JUFREX (2020): Technical Paper: Review of the Law on the National Public Broadcaster Radio and Television and the Law on Media. Laws adopted by the Parliament of Montenegro on 27 July 2020. Prepared by Joan Barata Mir.

²²² Council of Europe (2020): Legal analysis of the Draft Law on Audiovisual Media Services of Montenegro. Prepared by Joan Barata Mir and Tanja Kerševan Smokvina for the Council of Europe.

²²³ JUFREX (2021): Technical Paper: Expert review on the Draft Law on Audio Visual Media Services; and review of the alignment of the Law on Media and the Law on the National Public Broadcaster Radio and Television of Montenegro (July 2020) with the Draft Law on Audio Visual Media Services. Prepared by Joan Barata Mir, Siniša Gazivoda and Deirdre Kevin.

²²⁴ [Montenegro adopts Media Strategy 2023-2027](https://www.gov.me/en/article/montenegro-adopts-first-media-strategy-for-2023-2027-to-enhance-the-environment-for-free-and-professional-journalism), <https://www.gov.me/en/article/montenegro-adopts-first-media-strategy-for-2023-2027-to-enhance-the-environment-for-free-and-professional-journalism>



4.7.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant current definitions with the AVMS Directive. Definitions are outlined in the current Electronic Media Law, and in the Draft Law on AVMS.

Table 107. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	The current law is aligned with the 2010 AVMSD. It lacks the phrase: “where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes”, from the 2018 AVMSD. *** Yes – the Draft Law is aligned with the 2018 AVMSD.	Electronic Media Law, Article 8 (1, 1) *** Draft Law on AVMS, Article 7 (1)
Video-sharing platform (VSP) service	Yes – aligned (verbatim) with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 7 (2)
Programme	Yes – the current law is aligned with the 2010 AVMSD. *** Yes – the Draft Law is aligned with the 2018 AVMSD.	Electronic Media Law Article 8 (1, 5) *** Draft Law on AVMS, Article 7 (8)
User-generated video	Yes – aligned (verbatim) with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 7 (10)
Editorial decision	Yes – aligned (verbatim) with the 2018 AVMSD in the Draft Law.	As above, Article 7 (11)
Editorial responsibility	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 6) *** Draft Law on AVMS, Article 7 (12)
Media service provider	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 2) *** Draft Law on AVMS, Article 7 (3)
VSP provider	Yes – aligned with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 7 (5)



Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 7 (7)
Broadcaster	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 4) *** Draft Law on AVMS, Article 7 (7)
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 8) *** Draft Law on AVMS, Article 7 (14)
Audiovisual commercial communication (ACC)	Aligned with the 2010 AVMSD in the current law – no reference to user-generated video. *** Yes – aligned with the 2018 AVMSD in the Draft Law.	Electronic Media Law, Article 8 (1, 13) *** Draft Law on AVMS, Article 7 (20)
Television advertising	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 14) *** Draft Law on AVMS, Article 7 (21)
Surreptitious ACC	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 14) / and *** Draft Law on AVMS, Article 7 (23)
Sponsorship	Aligned with the 2010 AVMSD – no references to user-generated video or VSPs. *** Yes – aligned with the 2018 AVMSD in the Draft Law.	Electronic Media Law, Article 8 (1, 17) *** Draft Law on AVMS, Article 7 (25)
Teleshopping	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 8 (1, 16)



		*** Draft Law on AVMS, Article 7 (24)
Product placement	Aligned with the 2010 AVMSD – no reference to user-generated video. *** Yes – aligned with the 2018 AVMSD in the Draft Law.	Electronic Media Law, Article 8 (1, 18) *** Draft Law on AVMS, Article 7 (26)
European works	Yes – aligned with the 2018 AVMSD in in the current and draft laws.	Electronic Media Law, Article 60 *** Draft Law on AVMS, Article 60
Independent producer	Yes – the definition of independent producer is standard – covering cross ownership between independent producers and broadcasters.	Electronic Media Law, Article 62 *** Draft Law on AVMS, Article 62
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	The broadcaster is obliged to respect the privacy and dignity of citizens and protect the integrity of minors. No specific definitions – but the law refers to harmful content as that which can cause physical, mental or moral detriment to minors. Programmes that contain pornography or whose content highlights and supports violence, drug addiction or other forms of criminal behaviour, and programmes that abuse the gullibility of viewers or listeners are prohibited.	Electronic Media Law, Article 62 Article 55, paragraphs 1, 2, 4 *** Draft Law on AVMS, Article 55, paragraphs 1, 2 and 4
Definition of incitement to hatred (or equivalent)	Both current and draft laws – prohibit incitement to hatred, and discrimination. *** A definition is provided in the Rule Book on Programme Standards in Electronic Media, whereby hate speech is defined as all forms of expression that incite or spread hatred or discrimination.	Electronic Media Law, Article 48, paragraph 2 *** Draft Law on AVMS, Article 47 *** Rule Book on Programme Standards in Electronic Media, Article 2 (a)

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey



In terms of definitions, the current Law on Electronic Media is closely aligned with the 2010 AVMS Directive, and partially aligned with the 2018 AVMS Directive. All of the changes to definitions that are needed in order to fully align with the 2018 AVMS Directive have been incorporated into the Draft Law on AVMS. Aside from the definitions provided in the Rule Book on Programme Standards in Electronic Media, there are no specific definitions of “harmful content” or “hate speech” in the primary laws, but both are regulated and more detail is provided below (under the sections covering general principles and key values, and the protection of minors).

4.7.1.3. Jurisdiction, and the principle of freedom of reception and retransmission

The national legislative framework with regard to jurisdiction, and to the principle of freedom of reception and retransmission is outlined in the tables below.

Table 108. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers.	Yes – the current law is aligned with the 2010 AVMSD *** Yes – the Draft Law aligns with the 2018 AVMSD	Electronic Media Law, Article 4 *** Draft Law on AVMS, Article 2
Article 2 (5a). Requirement that AVMS providers inform the competent national regulatory authorities or bodies about any changes that may affect the determination of jurisdiction.	Yes – the Draft Law aligns with the 2018 AVMSD.	As above, Article 2
Article 2 (5b). Requirement to maintain up-to-date list of the AVMS providers under national jurisdiction	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 12 *** Draft Law on AVMS, Articles 2 and 152
Article 28a (paragraphs 1-5) regarding the establishment of the jurisdiction of VSPs.	Yes – the Draft Law aligns with the 2018 AVMSD.	Draft Law on AVMS, Article 113
Article 28a (paragraph 6). Requirement to maintain an up-to-date list of the VSP providers established or deemed to be established on their territory.	Yes – the Draft Law aligns with the 2018 AVMSD.	As above, Article 113 and Article 152
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing opinion on jurisdiction	Not mentioned	



Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The Draft Law was updated (October 2022), and once adopted should align with the Directive and include provisions such as Article 2 (5a) requiring AVMS providers to inform the NRA of changes in relation to their jurisdiction, and the relevant provisions on establishment of the jurisdiction of VSPs. The principle of freedom of reception and retransmission for AVMS is examined below.

Table 109. Freedom of reception and retransmission – and derogations

AVMSD and the freedom of reception and retransmission	In line with AVMSD and European standards	References
Article 3 (1) – ensuring freedom of reception and retransmission.	Yes – the current law is aligned with the 2018 AVMSD. Montenegro may temporarily derogate from this principle only in the cases prescribed by the law (see below). (the Draft Law is the same)	Electronic Media Law, Article 5 *** Draft Law on AVMS, Article 3
Article 3(2) – derogations from the principle of freedom of reception and transmission.	The current law is aligned with the 2010 AVMSD as regards derogations *** Yes – the draft law is aligned with the 2018 AVMSD	Electronic Media Law, Article 5 *** Draft Law on AVMS, Article 4

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The principle of freedom of reception and retransmission is enshrined in the law and aligned with the 2018 AVMS Directive. As regards derogations, the law currently in force is aligned with the 2010 AVMS Directive. The Draft Law on AVMS, once adopted, should align with the 2018 AVMS Directive as regards derogations.

4.7.2. General principles and key values promoted by the AVMS Directive

This section looks at a range of general principles relevant to the media sector, and key values promoted by the AVMS Directive. The table below provides an overview of some of the general principles that are not dealt with in more detail in later sections.



Table 110. General principles and key values

General principle/key value	Relevant provision/provisions	References
Principle of non-discrimination	<p>Yes – the Constitution prohibits discrimination on any grounds, affiliation or personal characteristic.</p> <p>***</p> <p>The Criminal Code addresses racial and other discrimination under Article 443</p> <p>***</p> <p>The Electronic Media Law prohibits content that incites hate on grounds of race, gender, religion, ethnic, national, and any other form of discrimination.</p> <p>***</p> <p>The Draft Law on AVMS states that AVMS shall not encourage violence, hatred or discrimination based on race, ethnicity, affiliation with a minority nation or minority ethnic community, group affiliation or assumed group affiliation.</p>	<p>Constitution of Montenegro, Article 8</p> <p>***</p> <p>Criminal Code of Montenegro Article 443 Racial and other Discrimination</p> <p>***</p> <p>Electronic Media Law, Article 48 (2)</p> <p>***</p> <p>Draft Law on AVMS, Article 47</p>
Prohibition of incitement to hatred and incitement to violence	<p>The Constitution prohibits the infliction or encouragement of hatred or intolerance on any grounds (Article 7). Under the Prohibition of Censorship (Article 50), a court may prevent dissemination of information and ideas via the public media that, inter alia, incite to violence or propagate racial, national and religious hatred or discrimination.</p> <p>***</p> <p>The Criminal Code under Article 443 (2 and 3) also penalises the persecution of individuals and organisations and the spreading of ideas about the superiority of one race over another or propagates hatred or intolerance based on race, gender, disability, sexual orientation, gender identity or other personal characteristic or incites racial or other discrimination</p> <p>***</p> <p>The Electronic Media Law prohibits the broadcasting of programmes with content that incites hatred on grounds of race, gender, religion, ethnic, national, and any other form of discrimination (Article 48 (2)).</p> <p>***</p>	<p>Constitution of the Republic of Montenegro, Article 7, Article 50</p> <p>***</p> <p>Criminal Code of Montenegro Article 443 (2 and 3)</p> <p>***</p> <p>Electronic Media Law, Article 48 (2)</p> <p>***</p> <p>Media Law, 2020, Article 36</p> <p>***</p> <p>Draft Law on AVMS, Article 47</p> <p>***</p> <p>Rule Book on Programme Standards in Electronic Media, Article 5 (d) and Article 17</p>



	<p>The Draft Law on AVMS expands the grounds for incitement to hatred and encouragement of discrimination (Article 47)</p> <p>***</p> <p>Article 36 of the Media Law forbids the dissemination of ideas, claims and opinions that incite, spread, promote or justify discrimination, hatred or violence against a person or group of persons. It forbids racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in the form of nationalism, discrimination and hostility against a national minority and another minority ethnic community.</p>	
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism</p>	<p>The Draft Law on AVMS, in the context of obligations on VSPs, provides that the general public must be protected, inter alia, from content the dissemination of which constitutes public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia</p> <p>***</p> <p>Under Article 443 of the Criminal Code of Montenegro, it is a crime to violate fundamental human rights and freedoms, on grounds of a difference in race, colour of skin, national affiliation or ethnic origin, or some other personal capacity. It is also a crime to spread ideas about the superiority of one race over another, or promote racial hatred, or incite to racial and other discrimination (Article 443). The Criminal Code criminalises public incitement of violence towards a group or member of a group (on the basis of the grounds in the Constitution). It is also a crime to approve, renounce the existence of or significantly reduce the gravity of the criminal offences of genocide, crimes against humanity and war crimes committed against a group or member of a group (Article 370).</p> <p>It is a crime to display, produce or possess child pornography (Article 211).</p> <p>Under the Criminal Code, it is a crime to publicly call for the commission of terrorist acts (Article 447a).</p>	<p>Draft Law on AVMS, Article 114</p> <p>***</p> <p>The Criminal Code of Montenegro, Article 443, Article 370, Article 211, Article 447a</p>

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey



In summary, these first three principles: non-discrimination, prohibition of incitement to hatred and violence, and prohibition of criminal content are dealt with in the legislative framework. The Constitution, and both the current legislation and, once it will be adopted, the proposed Draft Law enshrine the principle of non-discrimination. These documents also prohibit incitement to hatred and incitement to violence in AVMS. The Rule Book on Programme Standards prohibits the spreading of hate speech. Under the Criminal Code, it is a crime to spread racial hatred, or to incite racial or other discrimination. It is also a crime to incite violence towards a group or a member of a group. It is a crime to display, produce or possess child pornography. Once adopted, the Draft Law on AVMS, in the context of obligations on VSPs, should include the obligation to protect the general public from, *inter alia*, content the dissemination of which constitutes public provocation to commit a terrorist offence, and from offences concerning child pornography and offences concerning racism and xenophobia.

4.7.2.1. Freedom of expression, freedom of the media and prohibition of censorship

The table below indicates the relevant legal framework in Montenegro for the protection of freedom of expression.

Table 111. Freedom of expression

General principle/key value	Relevant provision/provisions	References
Freedom of expression/ freedom of the press/prevention of censorship/right to information	Article 47 enshrines freedom of expression, and Article 49 protects the freedom of the press. Article 50 prohibits censorship, and Article 51 enshrines the right of access to information. The right to freedom of expression may be limited only by the right of others to dignity, reputation and honour and if it threatens public morality or the security of Montenegro.	Constitution of Montenegro, Articles 47, 49, 50 and 51
Freedom of expression/ freedom of the media/	The state guarantees the freedom of the media, expression and information. This law shall be interpreted and applied in accordance with the European Convention on the Protection of Human Rights and Fundamental Freedoms and practice case law of the European Court of Human Rights (Article 2). The state guarantees the right to the free establishment of the media and the unhindered work of journalists and their security. Journalists should work in compliance with the Constitution, the law and the Code of Journalists of Montenegro and other general acts prescribing the protection of professional standards (Article 3).	Media Law (2020), Articles 2 and 3
Freedom of expression	Article 2 of the Electronic Media Law emphasises that the law should not be interpreted in such a way as to restrict freedom of speech or freedom of expression	Electronic Media Law, Article 2(2)



	<p>(Article 2 (1)); in accordance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights (Article 2 (2))</p> <p>***</p> <p>Under Article 11, the NRA – the Agency for Electronic Media of Montenegro (AEM) exercises its competencies impartially and transparently in order to achieve, <i>inter alia</i>, freedom of expression and media pluralism.</p>	<p>***</p> <p>Draft Law on AVMS</p> <p>Article 11</p>
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Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

As outlined in the table above, freedom of expression is enshrined in the Constitution, and covered in detail in the Media Law. According to the national expert, there were concerns regarding the provisions in the Media Law 2020 with regard to the protection of sources. Under previous media legislation, the protection of sources was absolute and no one could impel a journalist to reveal their source. Under the (2020) law a court may decide that a source should be revealed when necessary to protect the interests of national security and territorial integrity and for protection of health. There were concerns about whether in the investigation phase (conducted by the state prosecutor under criminal procedure law) a source disclosure order could be issued by the state prosecutor without the possibility of a judicial review. The possibility of appealing the decisions to a higher instance court was not envisaged. These concerns have been addressed by the Working Group for Amendments to Media Laws in order to improve the safeguards against misuse of this provision. The source can only be revealed upon request of the court (and not the state prosecutor), and only when the court has ensured that the information identified is directly related to the specific case, that the information can be obtained from other sources and that the statutory legitimate interest in disclosing the source of the information, as set out in paragraph 2 of this Article, outweighs the need to protect the source of the information.

The provision in the Constitution regarding the protection of freedom of expression has also been the subject of discussion. It states that, *inter alia*, the right to freedom of expression may be limited by the right of others to dignity, reputation and honour. In one expert review carried out for the Council of Europe, it was emphasised that this provision was very general and lacked legal certainty and predictability. The report stated that restrictions of this kind should be formulated on the basis of detailed legal provisions, including those introduced in additional and more specific sections of the law. Restrictions should also be tightly worded and proportionate to the legitimate aim pursued. The same review highlighted that the provision of freedom of expression in the Media Law stated that the media should comply with the Constitution, the law and the Code of Journalists. Regarding limits to freedom of expression, it stressed the importance of bearing in mind that ethical and professional norms need to be properly separated from legal and regulatory obligations, as only the violation of the latter can lead to legal responsibility.²²⁵

²²⁵ JUFREX (2021): Technical Paper: “Expert review on the Draft Law on Audio Visual Media Services; and review of the alignment of the Law on Media and the Law on the National Public Broadcaster Radio and Television of



A 2021 Mapping Media Freedom report highlighted the issue of the safety of journalists and detailed a continued trend in harassment of, and attacks on, journalists in Montenegro.²²⁶

In its 2022 Report on Montenegro, the European Commission stated that Montenegro should, in relation to freedom of expression:

*strengthen the effective protection of journalists and other media workers, through the full and effective judicial follow-up of threats and attacks, including old cases; refrain from any action, either political, legislative or administrative, that threatens to undermine the editorial, institutional or financial independence of the public broadcaster and continue restoring its editorial independence and professional standards; streamline the revision of media legislation and the drafting of the media strategy, through inclusive dialogue with media and civil society, and in line with the EU acquis and relevant European standards.*²²⁷

As noted above, the government of Montenegro formed a Working Group for Amendments to Media Laws in October 2021. In March 2023, the Group had completed a final version of the Draft Law on AVMS, and registration of the Draft Law in Parliament was pending before the latter was dissolved in June 2023 and new elections were called. The Working Group continued working on the Draft Law on Audiovisual Media Services (AVMS), but to date, this Law was not adopted by Parliament.

4.7.2.2. The independence of national regulatory authorities in the media sector

The NRA is the Agency for Electronic Media (commonly referred to as the Agency, or the AEM). The AEM is responsible for (among others) the granting of licences and registrations, the supervision of public and private broadcasters, the handling of complaints, sanctioning of services, and the development of rules and codes.

Montenegro (July 2020) with the Draft Law on Audio Visual Media Services”. Prepared by Joan Barata Mir, Siniša Gazivoda and Deirdre Kevin.

²²⁶ Media Freedom Rapid Response (2021) Mapping Media Freedom: https://www.mapmf.org/uploads/MFRR-Monitoring-Report_2021.pdf

²²⁷ European Commission 2022 Report on Montenegro: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf>



Table 112. Independence of the National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
<p>NRAs should be legally distinct from, and functionally independent of government.</p>	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Electronic Media Law stipulates under Article 10 that the AEM shall be an independent AVMS regulatory body with public authorities. The Agency shall act in the public interest. The Agency shall be an autonomous legal entity, functionally independent from any state authority, and any legal and natural persons engaging in production and broadcasting of radio and TV programmes, or provision of other audiovisual media services.</p> <p>***</p> <p>The Draft Law repeats the elements outlined above.</p>	<p>Electronic Media Law, Article 10</p> <p>***</p> <p>Draft Law on AVMS, Article 9</p>
<p>NRAs should exercise their powers impartially and transparently.</p>	<p>Yes - aligned with the 2018 AVMSD in both the current and draft laws.</p> <p>Both the current law (Article 14) and the Draft Law (Article 14) include provisions on the transparency of the work of the Agency.</p> <p>The Agency shall exercise its competences impartially and transparently (Article 11)</p>	<p>Electronic Media Law, 14</p> <p>***</p> <p>Draft Law on AVMS Articles 11 and 14</p>
<p>Clear definition of the competences and powers of the NRAs outlined in the law.</p>	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Both the current and draft laws outline clearly the competences of the AEM, and the competences of the Council of the AEM.</p>	<p>Electronic Media Law, Articles 12 and 14</p> <p>***</p> <p>Draft Law on AVMS, Articles 11 and 13</p>
<p>NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets.</p>	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p> <p>Article 42 of the current law outlines the financing resources, which are a mixture of registration fees, and licensing fees. The amount of these fees shall be determined by the Council, on the basis of Agency's annual programme of work and financial plan.</p> <p>Any surplus of AEM's revenues over expenditures may be used solely for the pursuit of legal requirements related to the performance of this function.</p> <p>***</p> <p>The Draft Law provides similar provisions.</p>	<p>Electronic Media Law, Article 42</p> <p>***</p> <p>Draft Law on AVMS, Article 41</p>



<p>Clear conditions and (transparent and non-discriminatory) procedures for the appointment and dismissal of the heads of NRAs/members of governing bodies laid out in the law.</p>	<p>Yes – almost aligned with the 2018 AVMSD in the current law, and fully aligned with the 2018 AVMSD in the Draft Law (see below) regarding dismissal of the Agency’s Director.</p> <p>Article 16 covers the competences of the Council members, and Article 17 addresses issues of conflict of interest. Articles 18-30 cover the process of appointment of members of the Council.</p> <p>Articles 32-39 outline the procedures and grounds for the dismissal or termination of Council members, or the Council as a whole.</p> <p>The Agency’s Director is appointed by the Council, based on public competition. Article 40 details the requirements for the position.</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD in the Draft Law.</p> <p>Article 15 covers the competences of the Council members, and Article 16 addresses issues of conflict of interest. Articles 17-29 cover the process of appointment of members of the Council.</p> <p>Articles 31-34 outline the procedures and grounds for the dismissal or termination of Council members.</p> <p>Article 38 outlines procedures for appointment of the Director of the Agency.</p> <p>The current law does not include a provision on the dismissal of the Agency’s Director. This section has been added in the Draft Law (Article 39).</p>	<p>Electronic Media Law, Articles 16, 17, Articles 18-30, Articles 32-39</p> <p>Article 40</p> <p>***</p> <p>Equivalent relevant articles in the Draft Law on AVMS,</p> <p>Articles 15, 16 and 17-29 Articles 31-34</p> <p>Articles 38 and 39</p>
<p>Existence of effective and independent appeal mechanisms.</p>	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p> <p>Appeals are lodged with the Council of the Agency.</p> <p>An administrative dispute may be instigated against the Council decision upon appeal.</p>	<p>Electronic Media Law, Articles 143 and 144</p> <p>***</p> <p>Draft Law on AVMS,</p> <p>Article 167</p>
<p>Provisions in the law that support cooperation between NRAs.</p>	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p>	<p>Electronic Media Law, Article 11</p> <p>***</p> <p>Draft Law on AVMS, Article 10</p>

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The table above indicates that the provisions regarding the independence of the NRA are covered in the national legislation, and this aligns with the 2018 AVMSD. According to the national expert, there are several challenges, in practice, as regards the independence of the AEM. In a 2017 report prepared in the context of the Council of Europe and European



Union joint project (JUFREX), it was noted that the AEM, which is defined by law as an independent regulatory body for audiovisual media services, operates in a challenging environment. Its work is limited, *inter alia*, by a lack of effective instruments for sanctioning, and the authorisation to conduct inspections.²²⁸

In its 2021 Report on Montenegro, the European Commission also stated that the Agency still lacks the authority and measures to effectively monitor and penalise broadcasters. Hence, the government should grant the AEM powers to impose a complete set of measures, including warnings, fines, suspensions and the revocation of licences ensuring proportionality and effectiveness. The report also recommended that there is a need to complete the legislative alignment on audiovisual media services and ensure operational independence of the media regulator and the public service broadcaster. Finally, the report stated that sufficient administrative capacity should be ensured for the AEM in order to enforce the EU *acquis*.²²⁹ The 2023 European Commission Report on Montenegro reiterated the need for the AEM to have the necessary range of powers to impose a complete set of measures, and the need to ensure the operational independence of the national media regulator.²³⁰

In its current state, the Draft Law under Article 163 (administrative control measures) outlines in detail the nature of the measures that can be used by the Agency in relation to violations of the Law. The Agency could: impose on the broadcaster a warning measure, a fine, and revoke its authorisation temporarily or permanently; impose on the linear AVMS distributor a warning measure, a fine or a restriction on the distribution of a particular radio or television programme from the programme list; impose on the on-demand AVMS provider or video-sharing platform provider a warning measure, a fine or restriction on the publication in the catalogue of programmes or on the exchange of a certain content via the platform.

In addition, the Draft Law would outline in detail the nature and aim of each measure and relevant procedures (Articles 164-166).

4.7.2.3. The protection of minors

In this section, the legislative framework for the protection of minors and the extent to which it aligns with the AVMS Directive is examined in relation to obligations on AVMS to protect minors from harmful content; with regard to protecting minors from harm in the context of audiovisual commercial communications; regarding prohibited/ restricted advertising.

²²⁸ JUFREX (2017): Montenegro media sector inquiry with recommendations for harmonization with the standards of the Council of Europe and the European Union: <https://rm.coe.int/montenegro-media-sector-inquiry-with-the-council-of-europe-and-europea/16807b4dd0>

²²⁹ European Commission 2021 Report on Montenegro: <https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-10/Montenegro%202021%20report.PDF>.

²³⁰ European Commission 2023 Report on Montenegro:
See: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_694%20Montenegro%20report.pdf



Table 113. Protection of minors

AVMSD and the protection of minors	In line with AVMSD	References
<p>Obligations to protect minors from harmful content, via watershed/scheduling, age verification tools or other technical measures</p>	<p>Yes – aligned with the 2010 AVMSD.</p> <p>Broadcasters are obliged to protect minors from harmful content. They are required to make use of scheduling and a watershed.</p> <p>On-demand service providers are also obliged to protect minors from the above content in a way that ensures that minors will not normally hear or see such broadcasts.</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD.</p> <p>The Draft Law on AVMS expands on the provision above to include the application of the highest degree of technical protection. Such measures include content categorisation and age verification tools.</p> <p>***</p> <p>More details regarding watersheds, the categorisation of programmes, warning symbols, etc. are provided in the Rule Book on Programme Standards in Electronic Media.</p>	<p>Electronic Media Law</p> <p>Articles 55 (1, 2, 3,4) and 82 (1,2)</p> <p>***</p> <p>Draft Law on AVMS, Articles 55 and 89</p> <p>***</p> <p>Rule Book on Programme Standards in Electronic Media (2011), Articles 19, 20, 21, 22, 23, 23a, 23b, 24 and 25</p>
<p>Prohibition of commercial use of personal data of minors collected when implementing these measures</p>	<p>Yes – aligned with the 2018 AVMSD in the Draft Law.</p>	<p>Draft Law on AVMS, Article 89</p>
<p>Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)</p>	<p>Yes – aligned with the 2018 AVMSD in the current and draft laws.</p>	<p>Electronic Media Law</p> <p>Article 85 (2)</p> <p>***</p> <p>Draft Law on AVMS, Articles 55 and 89</p>
<p>Bans or prohibitions (or limitations) regarding certain products: cigarettes, tobacco products, and electronic cigarettes, alcoholic beverages, etc. and provisions to effectively reduce the exposure of minors to ACCs for alcoholic beverages</p>	<p>Yes – the current law is aligned with the 2010 AVMSD. ACCs for tobacco and tobacco products are prohibited.</p> <p>The Draft Law includes electronic cigarettes and refills in line with the 2018 AVMSD.</p> <p>Regarding alcohol, yes – this is aligned with the 2018 AVMSD in both current and draft laws.</p> <p>Both have additional rules on the content and presentation of such ACCs.</p>	<p>Electronic Media Law</p> <p>Articles 85 (5), 85 (6) and 91</p> <p>***</p> <p>Draft Law on AVMS, Articles 97, 98, 99</p>



Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – this is aligned in detail, with the 2018 AVMSD in the current and draft laws.	Electronic Media Law Article 86 *** Draft Law on AVMS, Article 98
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Aligned with the 2010 AVMSD under the current law, whereby co- or self-regulation can be used to regulate such advertising. *** Yes - aligned with the 2018 AVMSD in the updated Draft Law on AVMS Article 53 of the Draft Law (Co-regulation and Self-regulation) also specifically references the regulation of such ACCs via self or co-regulation.	Electronic Media Law Article 53 *** Draft Law on AVMS Article 98 Article 53
Prohibiting of product placement in children's programmes	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law Article 96 (2) *** Draft Law on AVMS, Article 103

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The national legislative framework is largely aligned with the 2018 AVMS Directive as regards the protection of minors in audiovisual media services.

The Draft Law introduces several new provisions to align with the Directive, including the prohibition of commercial use of personal data of minors collected in the context of measures for protection.²³¹

It also introduces the provision that the Agency will encourage the use by media service providers of self-regulation and co-regulation to deal with the aims to effectively reduce the exposure of children to ACCs for alcohol, and to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).

One issue of concern in the past for the public and for NGOs was the need to ensure that cable operators provided automatic activation of parental control measures for harmful media content (with an age rating of 18) broadcast between 6 a.m. and 11 p.m. Due to complaints on these issues, the Agency implemented measures to deal with this.²³²

Regarding media literacy, the AEM together with universities and UN agencies implemented a series of webinars on media literacy aimed at high school teachers,

²³¹ Adapted by the Working Group for Amendments to Media Laws, in the new Draft Law on AVMS according to feedback from the NRA the Agency for Electronic Media (AEM).

²³² <https://fosmedia.me/arhiva/infos/drustvo/media-centar-poziva-aem-da-osigura-zastitu-maloljetnika-od-rijalitija>



students, parents and journalists in 2020. The Director of the AEM and the Director of the Public Service Broadcaster Radio and Television of Montenegro (RTCG) signed a Memorandum of Understanding in 2019. The Memorandum of Understanding was a follow-up to the activities carried out within the framework of the media literacy campaign “Let’s Choose What We Watch”.²³³ An important NGO with whom the AEM cooperates with in this area is Mladiinfo Montenegro.²³⁴

4.7.2.4. The promotion of the rights of people with disabilities to access audiovisual content

The 2018 AVMS Directive strengthens the obligations for AVMS providers to provide accessible audiovisual media content. EU Member States are now expected to ensure “without undue delay” that audiovisual media services are made “continuously and progressively more accessible”. The table below examines the legislative framework in Montenegro.

Table 114. Accessibility

AVMSD and accessibility of audiovisual media services	In line with AVMSD	References
Ensuring – without undue delay – that services provided by AVMS providers are made continuously and progressively more accessible.	The current law aligns with the 2010 AVMSD, as it refers to “encouraging” AVMS providers to make their services gradually more accessible to people with disabilities (Article 51). This would be achieved via self- or co-regulation (Article 53). *** Yes - aligned with the 2018 AVMSD in the Draft Law. The Draft Law reflects the language in the 2018 AVMSD and obliges services to continuously and gradually make their services more accessible to persons with disabilities.	Electronic Media Law Articles 51 and 53 *** Draft Law on AVMS, Article 50
AVMS providers should report on this to the NRAs. AVMS providers are encouraged to develop action plans in this area and should share these with the NRA.	Yes – aligned with the 2018 AVMSD in the Draft Law. Media service providers should be encouraged to adopt action plans for the implementation of these obligations. AVMS providers shall inform the Agency at least every two years of the implementation of the measures set out in paragraph 1 of this Article.	Draft Law on AVMS, Article 50
States should provide a public online point of contact for providing information and receiving complaints.	The Agency will be the online point of contact for providing information and receiving complaints regarding all accessibility issues referred to in this Article.	Draft Law on AVMS, Article 50

²³³ <https://aemcg.org/en/obavjestenja/aem-and-rtcg-sign-a-memorandum-of-understanding/>

²³⁴ <https://mladiinfo.me/odrzana-radionica-o-medijskoj-pismenosti/>



Emergency information should be in accessible formats.	Yes – aligned with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 50
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Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The obligations regarding the rights of people with disabilities to access audiovisual content are partly aligned with the 2018 AVMSD in the current law. Representatives of the NRA in the Working Group for Media Strategy Development pointed out the need to define measures that will lead to a proportional and continuous increase in the content which is accessible for people with disabilities.²³⁵

The Draft Law updates these provisions to align with the 2018 AVMSD. Audiovisual media service providers are obliged to progressively make their services more accessible to persons with disabilities through proportionate measures. They will be encouraged to develop action plans in this area, and are obliged to report to the Agency on their progress. The Agency will be the online point of contact for providing information and receiving complaints regarding all accessibility issues referred to in this Article. Finally, audiovisual media service providers are obliged to provide emergency information, including public notices and announcements in cases of danger to human life and health, national security and public order and peace, in a way that is accessible to persons with disabilities.

4.7.2.5. Transparency of media ownership and the promotion of media pluralism

The 2018 AVMS Directive emphasises (recital 15) that “Transparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems”. The table below looks at the legislative framework in Montenegro regarding these provisions.

²³⁵ Link: <https://aemcg.org/wp-content/uploads/2022/04/lzvjestaj-o-radu-AEM-za-2021.-godinu.pdf>

**Table 115. Transparency of media ownership**

AVMSD and transparency of media ownership	In line with AVMSD	References
Requirement for AVMS provider to provide publicly accessible information on the following: its name, the address at which it is established, its email address or website, the state having jurisdiction over it and the competent NRA.	Yes – aligned with the 2018 AVMSD in both the current legislation and in the Draft laws.	Electronic Media Law, Article 46 *** Draft Law on AVMS, Article 45
Possible to also require AVMS providers to make accessible information on their ownership structures.	Yes – both the current and draft laws oblige the AVMS providers to provide details regarding their ownership structure to the Agency – every year. The Agency then publishes this data in the Official Gazette of Montenegro. The Draft Law has updated this to also place this obligation on VSP providers.	Electronic Media Law, Article 129 *** Draft Law on AVMS, Article 152
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	Yes – aligned with the 2018 AVMSD in the current and draft laws. Maintaining such a register is a Competence of the Agency. The Draft Law includes a register for VSPs.	Electronic Media Law, Article 12 *** Draft Law on AVMS, Article 11 (5) Article 150 (Registers of Service Providers)

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The Montenegrin legislative framework already has quite strong rules with regard to the transparency of media ownership as outlined above. For the broader media sector, this is covered in the Law on Media. For audiovisual media services, these obligations exist in the Electronic Media Law. The Draft Law on AVMS, aims to further extend the obligation to VSPs. According to the national expert, there are challenges in relation to unregistered online media. They frequently have no public information regarding ownership or contact information. Identifying the real owner is difficult, and especially pronounced if a foreign Internet domain is used. These problems are significant in relation to responsibility for media content, but also for the issue of media concentration.

The Law on Media stipulates that the state guarantees media pluralism and one of the aims of the Law on Electronic Media is the promotion of media pluralism. In addition, the development of pluralism is one of the principles of the regulation of audiovisual media services.

The Draft Law on AVMS incorporates all of the above provisions related to transparency of media ownership, and includes VSPs in the scope of these provisions.



The national regulatory authority – the AEM – also manages a special fund aimed at the promotion of media pluralism and diversity.²³⁶

4.7.3. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works. The table below outlines the national framework and assesses alignment with the 2018 AVMS Directive.

Table 116. Promotion of European works on linear services

AVMSD and the promotion of European works (linear services) (Articles 16 and 17)	In line with AVMSD	References
The use of majority quota obligations (for example more than 50% of content) to promote European works.	Yes – aligned with the 2010 and 2018 AVMSD.	Electronic Media Law, Article 61 *** Draft Law on AVMS, Article 61
Exceptions to this rule.	Yes – aligned with the 2018 AVMSD. Rules do not apply to local, non-for-profit or regional broadcasters nor to those not included in regional or national networks. *** The Draft Law exceptions are: time allotted to news, sports events, advertising, teletext services and teleshopping. Article 64 outlines in detail exemptions: for local and regional broadcasters, non-profit television programme broadcasters; and radio programme broadcasters.	Electronic Media Law, Article 64 Electronic Media Law, Article 61 *** Draft Law on AVMS, Article 61, Article 64
Rules where a minimum percentage of content (for example 10%) of content broadcast (or of programme budgets) should be European works created by	Yes – aligned with the 2010 and 2018 AVMSD in the current and draft laws.	Electronic Media Law, Articles 61 and 63 ***

²³⁶ Rule Book on distribution of funds from the Fund for the Promotion of Pluralism and Media Diversity intended for commercial and non-profit Electronic Media:
<https://aemcg.org/wp-content/uploads/2022/03/Pravilnik-o-raspodjeli-sredstava-za-podsticanje-pluralizma-i-raznovrsnosti-medija-precisceni-tekst-11.02.2022.pdf>



producers who are independent of broadcasters.		Draft Law on AVMS, Article 62 and 63
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Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

From the above, it is clear that the obligations for linear audiovisual media services with regard to the promotion of European works, are aligned with both the 2010 and 2018 AVMSD.

Table 117. Promotion of European works on on-demand audiovisual media services

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Requirement that providers of on-demand AVMS secure at least a 30 % share of European works in their catalogues and ensure prominence of those works.	The current law is aligned with the 2010 AVMSD, whereby on-demand AVMS are obliged to promote the production of and access to European works. *** Yes – aligned with the 2018 AVMSD in the Draft Law.	Electronic Media Law, Article 61 *** Draft Law on AVMS, Article 91
Exemptions for AVMS providers with a low turnover or a low audience?	Yes – aligned with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 91
Reference to European Commission guidelines regarding a) the calculation of the share of European works, and b) definitions of low audience and low turnover of services?	In addition, more detailed requirements for implementing these measures shall be laid down by the Agency Council, with reference to Guidelines issued by the European Commission	Draft Law on AVMS Article 61 Article 91
Inclusion of any financial contribution obligations for services targeting the country?	Not mentioned.	

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The new provisions in the 2018 AVMSD with regard to obligations on on-demand AVMS to promote European works are not yet reflected in the national legislation. The Draft Law on AVMS included these provisions. However, as mentioned above, this Draft Law did not reach the stage of registration in Parliament. The guidelines of the European Commission are referenced in relation to a secondary Act for implementing these measures to be laid down by the Agency Council. The AEM work plan for 2022²³⁷ highlighted the need to strengthen

²³⁷ <https://aemcg.org/wp-content/uploads/2021/09/Plan-rada-Agencije-za-elektronske-medije-za-2022.-godinu.pdf>



the capacity of the Agency staff in order to prepare a by-law that would define the promotion of European audiovisual works in accordance with the Directive and the guidelines of the European Commission.

4.7.4. Rules on audiovisual commercial communications

This section looks at the rules on audiovisual commercial communications (ACCs) and their alignment with the AVMS Directive in terms of identification, content, placement, volume, etc. It also addresses rules regarding prohibited ACC in relation to certain goods and services.

Table 118. Audiovisual commercial communications (ACCs)

AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
ACC should be recognisable. Surreptitious ACC shall be prohibited and ACC shall not use subliminal techniques.	Yes – aligned with the 2018 AVMSD in the current and draft laws. ACC should be recognisable (88). Surreptitious ACC shall be prohibited and ACC shall not use subliminal techniques 85 (1 and 2). *** The same rules are included in the Draft Law.	Electronic Media Law, Articles 88 and 85 (1 and 2) *** Draft Law on AVMS, Article 97
ACC shall not prejudice respect for human dignity, promote discrimination, encourage behaviour prejudicial to health or safety, or encourage behaviour grossly prejudicial to the protection of the environment.	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 85 (3) *** Draft Law on AVMS, Article 97
ACC for the prescription of medicinal products and medical treatment shall be prohibited.	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 85 (7) *** Draft Law on AVMS, Article 97
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Articles 95 (5) and 85 (5) *** Draft Law on AVMS, Articles 101 and 102



No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes.	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 96 *** Draft Law on AVMS, Article 103
PP should not affect the responsibility and editorial independence of the audiovisual media service provider; directly encourage purchase or rental of the product; give undue prominence to the product.	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 96 *** Draft Law on AVMS, Article 104
Viewers shall be clearly informed of the existence of product placement in a programme.	Yes – aligned with the 2018 AVMSD in the current and draft laws.	Electronic Media Law, Article 96 *** Draft Law on AVMS, Article 104
Limiting the proportion of television advertising spots / teleshopping spots throughout the day, or during particular time periods?	Yes – aligned with the 2010 AVMSD. *** Yes – aligned with the 2018 AVMSD in the Draft law. The Draft Law changes the current rules from 9 minutes per clock hour (for commercial channels) and 6 minutes (for the PSB) – to 15% (public broadcasters), and 20% for commercial channels in relation to the two time periods 06:00 to 18:00, and 18:00 to 24:00.	Electronic Media Law, Article 92, 93 *** Draft Law on AVMS, Article 109
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Yes, – aligned with the 2018 AVMSD in the draft law.	Draft Law on AVMS, Article 109

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The Montenegrin legislative framework covering ACCs is closely aligned with the provisions of the 2018 AVMS Directive. The current legislation reflects the 2010 AVMS Directive. The minor changes (such as the inclusion of e-cigarettes, and the changes regarding duration of advertising) that should be introduced are contained in the draft Law in its current state and would ensure full alignment with the 2018 AVMS Directive, when the law is adopted. In addition, the draft includes VSPs in its scope (see chapter 5, below), and hence includes the provisions on ACCs.



4.7.5. Provisions applicable to video-sharing platforms (VSPs)

An important novelty of the 2018 AVMS Directive was expanding the scope to include VSPs. The relevant definitions in this area were addressed in section 4.7.1.2 above. The establishment of the jurisdiction of VSPs was covered under section 4.7.1.3 above. The provisions regarding VSPs have been incorporated in the Draft Law on AVMS.

Table 119. Obligations on video-sharing platforms regarding content (VSPs)

AVMSD and provisions on VSPs 28b	In line with AVMSD	References
Protecting minors from harmful content in programmes, user-generated videos and ACCs; and protecting the general public from programmes, user-generated videos and ACCs containing incitement to violence or hatred; and from criminal content - provocation to commit a terrorist offence; child pornography; racism and xenophobia.	Yes – aligned with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 114
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and introduce measures for those controlled and uploaded by others.	Yes – aligned with the 2018 AVMSD in the Draft Law. It refers to the need to comply with Articles 97 and 99 dealing with ACCs.	Draft Law on AVMS, Article 115 And with reference to articles 97 and 99
VSPs should clearly inform users where programmes and user-generated videos contain ACC.	Yes – aligned with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 115
VSPs should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).	Yes – aligned with the 2018 AVMSD in the Draft Law. The provision refers also to the general provision on co-regulation and self- regulation (Article 53)	Draft Law on AVMS, Article 115 Article 53

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

As is apparent above, the Draft Law on AVMS, in its current state, would allow to align national legislation with the 2018 AVMS Directive, once adopted. The changes to the Draft Law aimed to complete any gaps that were identified in earlier reviews.²³⁸ The 2018 AVMS Directive also outlines a range of measures that can be used by VSPs in order to ensure that the protections outlined above, and the requirements regarding ACCs are

²³⁸ These were addressed by the Working Group for Amendments to Media Laws, according to feedback from the national regulatory authority the Agency for Electronic Media (AEM).



properly implemented. In addition, the AVMS Directive outlines the role of the NRA in assessing the measures put in place.

Table 120. Obligations on video-sharing platforms – measures and supervision (VSPs)

AVMSD and provisions on VSPs (Article 28b)	In line with AVMSD	References
Measures introduced by national rules?		
Adapting Terms and Conditions for users of VSPs to include obligations relevant to content and/or ACCs	Yes – aligned with the 2018 AVMSD in the Draft Law. Terms and conditions will include requirements related to content and to ACCs (as outlined under Articles 114 and 115)	Draft Law on AVMS, Article 116
Possibility to declare the presence of ACCs in user-generated video	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116
Reporting or flagging systems to report harmful content to the VSP provider	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116
Age verification systems for users	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116
Content rating systems for users	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116
Parental control systems	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116
Procedures for complaints to the VSP	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116 and Article 117
Providing media literacy measures and tools and raising users' awareness of those measures and tools	Yes – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 116
Implementation and supervision		
Protection of the personal data of minors	Yes - aligned with the 2018 AVMSD in draft law.	As above, Article 116
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	Yes - aligned with the 2018 AVMSD in draft law. The Draft law refers to a future potential by-law on implementation of measures to be prescribed by the Council of the Agency.	Draft Law on AVMS, Article 116
Are there out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and can users assert their	Yes – aligned with the 2018 AVMSD in the Draft Law.	Draft Law on AVMS, Article 117



rights before a court in relation to VSPs?	VSPs establish disputed resolution procedures Users retain the option to assert their rights before a court in relation to VSPs (Article 117).	
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Yes – the Draft Law is aligned with the 2018 AVMSD. The general provision on co-regulation and self-regulation (Article 53) encourages best practice.	Draft Law on AVMS, Article 53

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

The Council of Europe expert review of 2021²³⁹ recommended that the law aligns with the provisions of the Directive on VSPs in their entirety – including the list of potential measures to be taken by VSP provider, in order to ensure that the law in Montenegro fully complies with the EU *acquis*. This was taken on board by the Working Group for Amendments to Media Laws and the new Draft Law on AVMS completed in October 2022 included the list of potential measures to be taken by the VSP as prescribed by the 2018 AVMS Directive. In addition, it is also stated that more detailed conditions for the implementation of measures shall be prescribed by the Council of the Agency. The follow-up Council of Europe review of 2022 noted that this new draft Law was fully aligned with the 2018 AVMS Directive as regards the provisions on VSPs.²⁴⁰

4.7.6. Concluding remarks and summary of findings

The process of aligning the legal framework with the 2018 AVMS Directive – via a new draft Law on AVMS has yet to be finalised.

In October 2021, the government established a Working Group for Amendments to Media Laws (the Law on Media, the Law on the Public Service Broadcaster and the Draft Law). A final version of the Draft Law on AVMS was completed in October 2022 and subjected to several new reviews (referenced above). The last Council of Europe review (November 2022) provided a positive assessment of the Draft Law in relation to alignment with the EU *acquis* and European standards, recommending only a few minor changes that were subsequently addressed by the Working Group in the Draft Law.

The registration of the Draft Law in Parliament is still pending to date (end December 2023). Following the dissolution of Parliament by the Montenegrin President via Decree on March 14th, a new election was called for 11 June 2023, which delayed the finalisation of the process of amending the media legislation. According to the government

²³⁹ JUFREX (2021): Technical Paper: “Expert review on the Draft Law on Audio Visual Media Services; and review of the alignment of the Law on Media and the Law on the National Public Broadcaster Radio and Television of Montenegro (July 2020) with the Draft Law on Audio Visual Media Services”. Prepared by Joan Barata Mir, Siniša Gazivoda and Deirdre Kevin.

²⁴⁰ JUFREX (2022) TECHNICAL PAPER: Expert review assessing the Draft law on Audiovisual Media Services (AVMS) regarding compliance with relevant European standards, by reference to the recommendations made in the Technical Paper of April 2022). Prepared by Paolo Cavaliere and Deirdre Kevin.



Work Plan for 2024, the adoption of the Draft AVMS Law should take place towards the second quarter of 2024.

The general principles and key values examined in this factsheet are all addressed in the national legislative framework, with the rules on transparency of media ownership being particularly strong. Some challenges exist with regard to freedom of expression in practice, for example regarding attacks on journalists and the need to amend several provisions in the Media Law. The European Commission 2022 report on Montenegro emphasised the need to address these and other issues: ensuring the editorial, institutional and financial independence of the public broadcaster; streamlining the revision of media legislation and the drafting of the media strategy, through inclusive dialogue with media and civil society, and in line with the EU *acquis* and relevant European standards.

The list²⁴¹ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

²⁴¹ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



4.7.7. List of relevant documents, reports, opinions, etc.

Table 121. Relevant documents, reports and opinions

Title	Main topics/themes	Link if available
EC (2022): Commission Staff Working Document Montenegro 2022 Report	EC report on Montenegro's progress towards membership	In English: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf
JUFREX (2022) TECHNICAL PAPER: Expert review assessing the Draft law on Audiovisual Media Services (AVMS) regarding compliance with relevant European standards, by reference to the recommendations made in the Technical Paper of April 2022). Prepared by Paolo Cavaliere and Deirdre Kevin.	Alignment of laws with EU <i>acquis</i> and European standards	
EC (2021): Commission Staff Working Document Montenegro 2021 Report	EC report on Montenegro's progress towards membership	In English: https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-10/Montenegro_2021_report.PDF
Media Freedom Rapid Response (2021) Mapping Media Freedom	Media freedom	In English: https://www.mapmf.org/uploads/MFRR-Monitoring-Report_2021.pdf_page_19
JUFREX (2021) TECHNICAL PAPER: "Expert review on the Draft Law on Audio Visual Media Services; and review of the alignment of the Law on Media and the Law on the National Public Broadcaster Radio and Television of Montenegro (adopted in July 2020) with the Draft Law on Audio Visual Media Services". Prepared by Joan Barata, Siniša Gazivoda and Deirdre Kevin.	Alignment of laws with EU <i>acquis</i> and European standards	
JUFREX (2020): Technical Paper "Review of the Law on the National Public Broadcaster Radio and Television and the Law on Media. Laws adopted by the Parliament of Montenegro on 27 July 2020". Prepared by Joan Barata Mir.	Alignment of laws with EU <i>acquis</i> and European standards	
Council of Europe (2020): "Legal analysis of the Draft Law on Audiovisual Media Services of Montenegro".	Analysis of Draft Law on audiovisual media services	



Prepared by Joan Barata Mir and Tanja Kerševan Smokvina for the Council of Europe.		
JUFREX (2017): Montenegro media sector inquiry with recommendations for harmonisation with the standards of the Council of Europe and the European Union	Analysis of media sector and regulatory framework	In English: https://rm.coe.int/montenegro-media-sector-inquiry-with-the-council-of-europe-and-europea/16807b4dd0

Source: Response of national expert of Montenegro to European Audiovisual Observatory standardised survey

4.7.8. Data compilation

This factsheet is based on information and materials supplied by the national expert Siniša Gazivoda, LLM at University of Montenegro, Faculty of Law and PhD student at Univeristu Donja Gorica, Faculty of Legal Sciences.