



The application of the AVMS Directive in selected non-EU countries

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The application of the AVMS Directive in selected non-EU countries

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The information and analyses presented in this report cannot in any way be considered as representing the point of view of the Commission on the alignment of the countries' legislation with the AVMS Directive in third countries either for the purpose of participation in the Creative Europe programme or for EU accession.

The application of the AVMS Directive in selected non-EU countries

European Audiovisual Observatory

Foreword

In the early 20th century, linguist and anthropologist Edward Sapir postulated that the structure of a language affects its speakers' cognition and views of the world. While modern linguists tend to be more nuanced and consider that languages only influence – rather than determine – thoughts and decisions, this hypothesis tends to offer an interesting perspective on why variety in languages may have played a role in the diversity and richness of European culture and in the birth of diverse works of art and currents of thought.

Safeguarding cultural and linguistic diversity in Europe and fostering the competitiveness of the European audiovisual industry is at the heart of the MEDIA strand of the Creative Europe programme, a programme adopted by the European Union and implemented by the European Commission. The programme allows for the participation of neighbouring countries outside of the European Union – candidate and potential-candidate countries, as well as European Neighbourhood countries – on the condition that they have transposed into national law the Audiovisual Media Services Directive,¹ including its 2018² revision.

In this context, the European Commission requested the European Audiovisual Observatory to analyse the level of alignment of national legal frameworks with the Directive in non-EU member states that have already participated in the MEDIA strand of the former Creative Europe programme.

The purpose of this mapping report is to offer an accurate overview of the state of play of the transposition process in 11 selected countries (Albania, Armenia, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, North Macedonia, Republic of Serbia, Ukraine and Tunisia), to provide the European Commission with relevant information on their national legal frameworks. The data gathered served as a support for the European Commission in its assessment of the possible participation of these countries in the MEDIA strand of the Creative Europe Programme.

I would like to thank our national experts for their invaluable contribution, and especially our coordinating expert Deirdre Kevin for the outstanding quality of her work in structuring and analysing all of the information gathered, as well as the media regulators who checked its accuracy. I also wish to stress the fact that this analysis has been carried out independently and does not reflect the views of the European Commission.

Have a pleasant read.

Strasbourg, December 2023

Maja Cappello

Head of the Department for Legal Information

European Audiovisual Observatory

¹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

² <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

Acknowledgements

The data used in the report was provided by a pan-European team of national experts and has been cross-checked with the national regulatory authority in each respective territory covered. The report and the country reports were drafted by the international expert Deirdre Kevin of the consultancy firm CommSol. A first version of this report was produced in December 2022 and this updated version was completed in September 2023.

Pool of national experts for the collection of data

AL	The submission for Albania was provided by Monika Canco, independent consultant and lecturer at the Faculty of Law, University of Tirana and Dr Mirela Bogdani, lecturer at the Faculty of Law, University of Tirana and Council of Europe consultant on freedom of expression.
AM	The submission for Armenia was provided by Shushan Doydoyan, founder and director of the Freedom of Information Center of Armenia (FOIC).
BA	The submission for Bosnia and Herzegovina was provided by Asja Rokša-Zubčević, COO of Wagner-Hatfield consultancy company.
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XK	The submission for Kosovo* was provided by Flutura Kusari, media lawyer based in Kosovo, and Ardita Zejnullahu, Executive Director at the Association of Broadcast Media in Kosovo (AMPEK).
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* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

UA	The submission for Ukraine was provided by Tetiana Avdieieva, lawyer and project manager, at the Centre for Democracy and Rule of law.
TU	The submission for Tunisia was provided by Professor Aymen Zaghdoudi, Assistant Professor of public law at the Institute of Press and Information Sciences in Manouba, and legal advisor of the Middle East and North Africa office of ARTICLE 19.

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1. Key findings

1.1. Introduction and context

1.1.1. Context of the project

The Creative Europe programme is open to non-EU participating countries (“third countries”), aside from the EU member states, and members of the European Free Trade Association (EFTA), which are part of the European Economic Area (EEA). Certain conditions must be met, linked to the specific status of these countries in relation to EU membership accession and their level of alignment with the rules and principles contained in the Audiovisual Media Services Directive 2010/13/EU as amended by (EU) 2018/1808 (“AVMS Directive”).

Article 9 of the Creative Europe Regulation³ contemplates a provisional, partial or total participation in the MEDIA strand of the Creative Europe programme (2021-2027) for those countries that already participated totally or partially in the MEDIA strand of the former Creative Europe (2014-2020) programme. This provisional participation can be pursued after 31 December 2022 if the following conditions are effectively met, depending on the status of the country:

- Either full alignment with the rules of the AVMS Directive, or
- Compliance with minimum requirements

In this context, the European Commission requested the European Audiovisual Observatory (EAO) to provide information on the national legal framework in a selection of third countries to check the alignment with the AVMS Directive. The objective of this mapping exercise is to provide the European Commission with elements as to the status of the legislation, to serve as a support for the European Commission in its assessment of possible participation of these selected countries in the MEDIA and cross-sectoral strands of the Creative Europe Programme also in the future. The exercise is not linked to the assessment of the state of progress of these countries’ candidacy for membership of the EU.

³ Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021R0818>



The European Commission extended the deadline of 31 December 2022 to end of December 2023. This report reflects the changes and developments that align with the Directive that occurred in some countries up to September 2023.

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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.

1.1.2. Countries covered in the project

1.1.2.1. Group I - Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Republic of Serbia.

The first group of countries included in this mapping consists of the candidate countries and potential candidates participating fully in Creative Europe 2014-2020, including the MEDIA strand. Regarding audiovisual policy, these countries are already obliged to align their national legislation with the AVMS Directive under Chapter 10 of the acquis, as part of the process of candidacy for membership of the EU. For these countries, full participation in the MEDIA and CROSS-SECTORAL strands (“CROSS”)⁴ is reliant on the provision of evidence showing that they have fulfilled the conditions set out in the AVMS Directive.

1.1.2.2. Group II - Georgia, Moldova, Ukraine,⁵ Tunisia

The second group of countries included in this mapping consists of a selection of countries considered to fall, at the time, in the category of European Neighbourhood countries participating in Creative Europe 2014-2020 and included partially in the MEDIA strand (Georgia, Moldova, Ukraine, Tunisia).

⁴ The Cross-Sectoral Strand offers a.o. funding to the news media sector in order to promote media literacy, pluralism and media freedom, as well as activities to help the sector adjust to the structural and technological changes it faces.

⁵ During the time-frame of the project, Georgia, Moldova and Ukraine were granted candidate status respectively in December 2023 and June 2022: <https://www.consilium.europa.eu/en/policies/enlargement/moldova/>



Of these, Georgia, Moldova and Ukraine are part of the European Union Eastern Partnership (EaP).⁶ In July 2021, the new agenda for the Eastern Partnership policy beyond 2020 was further outlined.⁷ It includes as key aims “increasing trade, growth and jobs, investing in connectivity, strengthening democratic institutions and the rule of law, supporting the green and digital transitions, and promoting fair, gender-equal and inclusive societies”. Support for civil society and independent media is listed as one of the 10 target areas included in this agenda.

Group II countries will achieve: partial participation in MEDIA and in CROSS to be pursued on the basis of compliance with general principles; full participation in Clusters 2 (related to content) and 3 (related to business) if there is tangible progress towards fulfilling the conditions set out in the AVMS Directive (i.e. the rules on linear services are aligned and there is progress regarding alignment of the rules on on-demand services); and full participation in all actions in MEDIA and CROSS if there is full alignment with the AVMS Directive.

1.1.2.3. Group III - Armenia and Kosovo⁸

Two other European Neighbourhood countries participating in Creative Europe 2014-2020, but which have not participated in the MEDIA strand, are Kosovo, a potential candidate for EU membership, and Armenia. Armenia is also a member of the EaP. Kosovo, as a potential candidate for EU membership, is party to the Stabilisation and Association Agreement (SAA) between the EU and Kosovo.

As with Group II countries, Group III countries will achieve: partial participation in MEDIA and in CROSS to be pursued on the basis of compliance with general principles; full participation in Clusters 2 and 3 if there is tangible progress towards fulfilling conditions set out in the AVMS Directive (i.e. the rules on linear services are aligned and there is progress regarding alignment of rules on on-demand services); and full participation in all actions in MEDIA and CROSS if there is full alignment with the AVMS Directive.

A key element of the project was the development of country reports for these 11 countries, with regard to the different laws, rules and current practices, as well as ongoing reforms leading to an alignment with the AVMS Directive. The evaluation to be made by the European Commission is largely focused on the alignment of national legislation with the AVMS Directive, but it will also take account of the promotion and protection of a range of general principles relevant to standards in the media sector and key values that are

⁶ The European Neighbourhood Policy (ENP) is implemented via the European Neighbourhood Instrument (ENI). This includes ENI South, including Tunisia, and ENI East, including Armenia, Georgia, Moldova and Ukraine. One of the six ENI targets is fostering human rights and fundamental freedoms, the rule of law, equality, sustainable democracy, good governance and a thriving civil society. See the Eastern Partnership policy beyond 2020 at: <https://www.consilium.europa.eu/en/policies/easternpartnership/eastern-partnership-policy-beyond-2020/>.

⁷ Joint Staff Working Document, »Recovery, Resilience and Reform: Post-2020 Eastern Partnership Priorities Adopted in July 2021”, https://eeas.europa.eu/sites/default/files/swd_2021_186_f1_joint_staff_working_paper_en_v2_p1_1356457_0.p df.

⁸ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



promoted by the Directive. The approach to gathering the relevant information is outlined under the methodology section (see chapter 2).

1.2. Executive summary

1.2.1. Objective of the project

The objective of the project was to provide the European Commission with information on the national legal frameworks in 11 countries on the basis of data delivered to the European Audiovisual Observatory by national experts in the field. The purpose of this information was to serve as a support for the European Commission in its assessment of the alignment of the national legislation with the AVMS Directive and the possible participation of these selected countries in the MEDIA and cross-sectoral strands of the Creative Europe Programme

The mapping was supplemented by using additional information provided by national authorities to the European Commission, including draft laws, expert opinions on draft and adopted laws (by, among others, the Council of Europe and the OSCE), and additional details from national regulatory authorities.

1.2.2. Key findings

According to the mapping exercise carried out by the European Audiovisual Observatory's, the majority of the 11 countries in the study already broadly contained or reflected the provisions of the Audiovisual Media Services Directive 2010/13, and there has been a strong momentum to push forward with reform of the media legislative framework in order to integrate the changes introduced by the amending Directive 2018/1808.⁹

This alignment involves (among other issues) the updating and addition of a range of definitions outlined in the Directive, the establishment of a level playing field for linear (broadcast) and non-linear (on-demand) audiovisual media services, increasing obligations for on-demand audiovisual media services in relation to European works, additional provisions regarding the independence of national regulatory authorities, provisions on the transparency of media ownership, strengthening provisions on the accessibility of audiovisual media services for people with disabilities, some relaxation of rules on

⁹ The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed. 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.



audiovisual commercial communications, and, significantly, the expansion of the scope of the Directive to include video-sharing platforms (VSPs).

Regarding the moves towards alignment, the Observatory's mapping exercise found that, by the end of September 2023, two countries had completely aligned their legislative framework (North Macedonia) or regulatory framework (Bosnia and Herzegovina, via Regulatory Codes) with the AVMS Directive. A new law adopted in Ukraine in 2022 is very closely aligned, and the legislation in Albania (2023) is closely aligned with all the provisions of the Directive. Other countries also updated their legislative frameworks which are now relatively closely aligned with the Directive including Moldova (2021, 2022, 2023), Georgia (2022, 2023) both of which still need some additional amendments. Armenia has also amended the legislation recently (2020, 2022, 2023) and still needs further amendments to fully reflect the provisions of the AVMS Directive.

Three countries have produced draft amendments to laws or new draft laws that are in various stages of consultation (status end September 2023). The draft law in Montenegro has been delayed by Parliamentary elections (June 2023) and the formation of a new Government. A consultation on the draft law in Serbia ran from 7 September to 7 October 2023. The draft law in Kosovo is also waiting to be moved forward by the Government having completed the consultation process and is currently (September 2023) undergoing review in the office of the Prime Minister. Unfortunately, there have been no recent positive developments in the legislative framework for the media in Tunisia and in fact freedom of expression has been undermined in the last two years (see further below).

These laws and the draft laws all address the issue of VSPs to a greater or lesser extent, and further secondary legislation is likely to be developed in this area. The mapping highlights a strong tradition in several countries of broad and inclusive consultative approaches to the development of amendments to media laws. In addition, NRAs also frequently play a significant role in most countries in the development of legislative proposals.

This mapping also provides an overview of the national legislative frameworks with regard to the promotion and protection of a range of additional general principles and key values promoted by the AVMS Directive. These include the right to freedom of expression and prohibitions of discrimination, incitement to violence or incitement to hatred, and illegal content such as provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia. In this context, alongside media legislation, the Constitutions and the Criminal Codes in the 11 countries were reviewed.

For the most part, the principle of non-discrimination and the prohibition of incitement to hatred are addressed in a range of legislation including audiovisual laws, the constitutions and also criminal laws. Illegal content as outlined in the Directive is largely addressed only in the national Criminal Codes, except for those countries where new amendments to audiovisual laws have been adopted to align fully with the AVMS Directive. All of the countries have detailed provisions throughout the legislative frameworks which aim to protect freedom of expression and freedom of the media.



Freedom of expression has, of late, been challenged in many of the countries addressed in the mapping due to various developments including the COVID-19 pandemic, wars, and national political crises.

There are also ongoing challenges common to all the countries such as the issue of the safety of journalists, and other forms of interference with or restrictions on the work of journalists. A further threat to freedom of expression relates to the economic challenges faced by the media sector, which frequently leaves them open to reliance on certain types of state funding, and/or to a stronger reliance on business and political interests.

A common issue of concern is the proliferation of online media outlets, many of which do not subscribe to professional ethics. Disinformation and hate speech are both on the increase in most of the countries in the study, and this type of content is frequently disseminated by such media outlets as well as on social media. The search for effective solutions to this problem is ongoing in these countries, and there is also concern regarding the potential impact on quality journalism and public trust in the media.

There are several areas of regulation in the Directive where the influence of Council of Europe (CoE) standards, and CoE work is strongly apparent. For example, the national legislative frameworks already align with the Directive as regards the independence of the national regulatory authority (NRA), and regarding the provisions on the transparency of media ownership.

There remain several key issues that continue to impact on the independence of the NRAs. These include ensuring adequate financing and resources, and also in some cases the fact that the NRA may have limited powers of enforcement or limited options regarding sanctions. In addition, despite detailed procedures in the various legislative frameworks regarding appointment and dismissal of governing bodies and Directors of NRAs, complete political independence is seldom guaranteed. There are also several examples of where the election of new boards and governing bodies are indefinitely blocked in Parliament.

A common and very positive approach to the nomination of members to the governing bodies of NRAs is the fact that in many countries civil society and NGOs are included in the law as nominating bodies for members. However, political influence on members of these bodies is still a problem for many of the countries covered in the mapping.

Regarding transparency of media ownership, it is still, in many cases, difficult to have a clear picture of the ownership of traditional media outlets due to the use of off-shore accounts and the presence of foreign ownership. There is a real concern regarding the lack of transparency regarding ownership of online media outlets. There also continue to be strong links between political and business interests and the media. NRAs also frequently contribute to enhancing transparency of media ownership via the regular publication of data and reports on this issue.

With regard to provisions in the national law that aim to protect the more vulnerable members of society, the protection of minors is strong in the countries reviewed, including in relation to audiovisual commercial communications. On the other hand the promotion of the rights of people with disabilities has been relatively weak as regards ensuring accessibility of audiovisual content. These obligations have been considerably



strengthened in new legislation adopted in the last two years. In those countries with draft legislation, the strengthened obligations in the Directive are on the way to being included in the law.

The important role played by the NRAs in relation to these issues is evident in the country reports with regard to the work they engage in regarding media literacy, and also several examples of proactive work to promote accessibility of audiovisual media content (where precise obligations were lacking).

While this mapping provides a broad overview of the common trends, challenges and approaches in the 11 countries of the mapping, further detailed reviews are available in the individual country reports.



2. Methodology

2.1. Establishing an inventory of national experts and developing questionnaires

The EAO selected an international co-ordinating expert to provide assistance throughout the mapping process and to develop a comparative analysis. The international expert collaborated with the EAO in establishing an inventory of national experts from relevant institutions, universities and/or law firms with proven expertise regarding the national media sector and, in particular, proven experience in the area of media law and regulation.

The international expert collaborated with the EAO in developing a standardised questionnaire on national legislative frameworks to be completed by each national expert. In accordance with the European Commission, it was decided to create two questionnaires (Questionnaire A and Questionnaire B) for the three groups of countries, with Groups I and II addressing all issues and Group III addressing a slightly reduced set of questions. The rationale for this was an expectation that Group III countries might fulfil just compliance with general principles and/or tangible progress towards fulfilling conditions set out in the AVMS Directive (i.e. the rules on linear services are aligned and there is progress regarding alignment of rules on on-demand services).¹⁰ The questionnaire aimed at identifying the level of alignment of the country in relation to the topics detailed in the table below.

Table 1. Themes addressed in the questionnaires

Themes addressed in the questionnaire	Relevant group	to Questionnaire
Legal definitions relevant under the AVMS Directive	All Groups	A and B
Jurisdiction, and the principle of freedom of reception and retransmission	All Groups	A and B
Principle of non-discrimination	All Groups	A and B
Prohibition of incitement to hatred and incitement to violence	All Groups	A and B
Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia; incitement to terrorism	All Groups	A and B
Freedom of expression, freedom of the media and prohibition of censorship	All Groups	A and B
The independence of national regulatory authorities in the media sector	All Groups	A and B

¹⁰ Although the details on the legislative framework of Kosovo were gathered via Questionnaire B, which did not include a range of themes (in line with the expectations of Group III countries), the authors decided to include the provisions on audiovisual commercial communications and on video-sharing platforms as the proposed draft law in Kosovo addresses these issues.



The protection of minors	All Groups	A and B
The promotion of the right of people with disabilities to access audiovisual content	All Groups	A and B
Transparency of media ownership and media pluralism	All Groups	A and B
Promotion of European works	Groups I and II	A
Rules on audiovisual commercial communications	Groups I and II	A
Provisions relevant to video-sharing platforms	Groups I and II	A

An element of “open questions” and “other” categories was used in order to allow for replies and details not foreseen in the development of the questionnaires, while space was provided to provide narratives on more qualitative information – for example with regard to general principles and key values – and their promotion in the legislation and in practice. Experts were also requested in this context to include reference to pertinent sources.

2.2. Quality and accuracy of the country reports

The information collected was compiled into country reports, which were sent to the national experts in order to ensure that the information had been correctly and comprehensively presented. An important element of the quality control was the process by which the information in the country report went through an additional peer review by a representative of the relevant media national regulatory authority (NRA) within the network of the European Platform of Regulatory Authorities (EPRA). During the entire process, the majority of the country reports were subject to many reviews, particularly as several new or updated legislative drafts and also many final adopted laws and amendments emerged during the time-frame of the project.

2.3. Note on the data in the tables

The data in the tables presented in this report include indications where, for example, definitions or provisions may be considered to be aligned, as frequently the text aligns verbatim with the AVMS Directive, or the national expert has considered the text to be equivalent. A closely aligned consideration reflects the fact that in some cases the differences may be quite minimal. An example is the addition of e-cigarettes to the prohibition on advertising of tobacco and tobacco products. In this case, the provisions aligned with the previous AVMS Directive 2010/13/EU are closely aligned with those of the revised AVMS Directive 2018/1808. Definitions or provisions are considered to be partly aligned where a more detailed phrase or clause has been omitted. In addition, definitions or clauses may be quite different but the overall meaning of the provision is either close to, or partially in line with, the meaning of the Directive, as analysed by the national experts.



3. Comparative analysis

3.1. The legislative frameworks for the media in 11 third countries

This section provides an overview of the legislative frameworks (including draft laws and codes) in the 11 countries, including current and draft legislation as per September 2023.

3.1.1. Relevant legislation for media regulation, general principles and key values

The national experts provided analyses of a broad range of laws, regulations, codes and guidance that are relevant to the themes addressed in this mapping (legislation in force and draft legislation). Specific details on these legal instruments and material can be found in the 11 country reports annexed to this comparative analysis report. The table provides an overview of the different themes and issues covered in the laws and codes analysed by the national experts. It is important to note that this table is not an exhaustive representation of all laws and other legal instruments concerning the media in these countries but rather an overview of the relevant texts examined by the national experts in the light of the questions formulated in the questionnaires.

Table 2. Typology of laws, regulations and codes relevant to the themes addressed in the mapping

Types of laws and legislation	Themes covered	Countries where referred
Constitution	Fundamental rights, non-discrimination, freedom of expression, freedom of the media.	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA, XK
Media laws / Information laws (broad – all media)	Covers a broad range of issues, including: freedom of the media; transparency of ownership; public information / impressum of the media outlet; protection of minors; protection of sources; right of correction and reply; funding of media.	AM, ME, MK, RS, TN, UA
Audiovisual media laws / Electronic media laws / Law on communications / Laws on broadcasting	Covering audiovisual media services, including: traditional broadcasters and on-demand services and their rights and obligations; implementing the provisions of the AVMS Directive; establishment and functioning of NRA; licensing, etc.	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA



Law on National Regulatory Authority (NRA)	Establishment and functioning of media NRA (or all NRAs in Georgia; in the case of Kosovo, this law also regulates the audiovisual media sector)	GE UA, XK
Laws on electronic communications/ telecommunications ¹¹	Regulation of electronic communications and/or telecommunications	GE, RS, TN, UA
Laws on public service broadcasting (PSB) ¹²	Establishment and functioning of public service broadcasters	ME, RS, UA, XK
Law on advertising	Laws regulating all advertising including audiovisual commercial communications and AVMSD provisions	AM, MD, RS, UA
Criminal codes	With references to offences: non-discrimination, hate speech, incitement to hatred/violence, terrorism, child pornography	AL, AM, GE, MD, ME, MK, RS, UA, XK
Anti-discrimination law / Equality laws	Non-discrimination, equality	AL, MD, TN
Law on freedom of expression	Freedom of expression	MD
Law on personal data protection	Personal data / privacy	AL
Law on rights of the child	Protection of minors	AL
Broadcasting codes / rules	Content standards, protection of minors	AL, BA, GE, MD, ME, TN, XK
Codes/ bylaws / rules on protection of minors	Protection of minors	MK, RS, XK
Codes / bylaws on audiovisual commercial communications	Audiovisual commercial communications	AL, BA, MK, RS, TN, XK
Codes / rules on European works	Promotion of European works	BA, MK, RS
Codes / rules on ownership and transparency	Transparency of ownership Ownership limitations	MK, RS
Codes/ Rules on accessibility	Accessibility of content for people with disabilities	MK
Rules on licensing	Licensing of services	BA, TN, XK
Guides: Hate speech	Hate speech	AL, MK, TN
Guides: Accessibility	Accessibility of content for people with disabilities	RS
Guides: Protection of minors	Protection of minors	TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

As indicated above, constitutional provisions are important sources for setting out the general principles and key values which are promoted by the AVMS Directive, such as

¹¹ Not all Electronic Communications laws were referenced as this was not a focus of this mapping.

¹² Not all PSB laws were referenced by the experts as the PSB was not a focus of this mapping.



freedom of the media, or the principle of non-discrimination. The national replies to the questionnaires frequently referenced provisions of the Criminal Codes with reference to certain types of illegal content, such as discrimination, incitement to hatred and hate speech, incitement to violence or terrorism, and provisions concerning child pornography. Certain general principles are also protected under specific laws such as anti-discrimination and equality laws, and specific laws on freedom of expression.

There are several legislative frameworks where a type of “media law” covering the entire media sector exists alongside more specific “audiovisual media laws”, “electronic media laws” or “broadcasting laws”. Such media laws are frequently the main source for provisions on freedom of the media, or on transparency of media ownership. Audiovisual media laws tend to be focused on the provisions of the AVMS Directive, but generally also include the provisions relevant to the establishment and functioning of the NRA.

Some countries have specific laws on the NRA, such as Ukraine and Kosovo. In Kosovo, the Law on the IMC (the Independent Media Commission) is also the source for the provisions regulating the audiovisual media sector. For some countries, the Law on Advertising is a key source with regard to rules on audiovisual commercial communications (Serbia, Moldova, Armenia and Ukraine).

All of the national legislative frameworks have additional bylaws, regulations, codes, rules and guidance covering issues such as broadcasting codes, protection of minors, European works, accessibility, monitoring of hate speech, etc.

3.1.2. Updated legislation, draft legislation and projects for media law reform

The following section provides an overview of the status of projects related to media reforms in each of the countries, up to September 2023. It outlines details on recently adopted legislation, on draft legislation and regarding strategies or projects aimed at developing proposals for media reforms. National legislative frameworks have recently been updated in North Macedonia and Albania (2023), Moldova (2021, 2022, 2023), Ukraine (2022), Georgia (2022, 2023), Armenia (2020, 2022, 2023) and relevant By-Laws were adopted by the NRA in Bosnia and Herzegovina in 2023.

In Bosnia and Herzegovina, the Law on Communications was last amended in 2012. The 2010 AVMS Directive was transposed by means of by-laws of the NRA – the Communications Regulatory Agency (CRA). Due to the political crisis in the country, the process of updating the relevant laws is complex. The same approach was taken again, with the alignment with the 2018 AVMS Directive completed by means of the CRA by-laws. The CRA prepared the relevant draft Codes, which were made available for public consultation on 23 September 2022, with a deadline of 6 November 2022. The Codes were adopted by the Council in February and May 2023, making it the first country to fully align the regulatory framework with the Directive.

In North Macedonia, a major EU-funded project was launched in September 2022 with the aim of aligning (by 2023) national media legislation with the EU acquis and



international media standards.¹³ The project aims to move forward the process of media reforms, namely to: revise the media legislation to harmonise it with the AVMS Directive and European standards, including recommendations to ensure the capacity of the NRA, and its functioning and independence; make recommendations regarding the legal framework for new media and alignment with the relevant EU acquis and European standards; analyse the media market and make recommendations regarding the legal framework to enhance competitiveness and pluralism; revise the legal framework and strategic documents of the public service broadcaster; and analyse and make recommendations regarding the legal framework for protecting journalists' social and labour rights in line with European standards. A major deliverable of the project was a set of amendments to the Law on Audio and Audiovisual Media Services (2013) in order to align the framework with the AVMS. In addition, the amendments reformed the funding mechanism for the Public Service Broadcaster which is linked to the funding of the National Regulatory Authority in order to ensure stable and increased funding for both institutions. These amendments to the law were adopted in July 2023.

In Ukraine, a Draft Law on Media was first published in 2020 and was passed by Parliament on first reading at the end of August 2022. The European Commission assessed the Draft Law as voted on in the first reading and made further recommendations to Ukraine to ensure its alignment with EU legislation. In addition, several expert reviews carried out on behalf of the Council of Europe further facilitated this process. The new Law was adopted by the Parliament on 13 December 2022 and signed by the President on 29 December 2022.

In Albania, draft laws published in 2019 attempted to include online publications in the scope of the legislation and in the remit of the NRA. The main focus of the laws was on issues of defamation. Following wide criticism of the draft amendments from local and international experts, this draft was abandoned. The transposition of the 2018 AVMS Directive is scheduled in the National Plan for European Integration (NPEI) 2022-2024. In September 2022, a new draft law was being discussed in the Parliament in Albania, which on 22 September 2022 was published and made available for consultation. The Draft Law was passed by Parliament in April 2023 and announced by the President of the Republic of Albania in May 2023.

Several countries have pending draft legislation that is intended to transpose the 2018 AVMS Directive. In Montenegro, a set of amendments to a range of laws related to the audiovisual sector (that include a Draft Law on Audiovisual Media Services, amendments to the Media Law, and amendments to the Law on the National Public Broadcaster Radio and Television) were completed by October 2022. The drafts were submitted for opinion to the Council of Europe and the European Commission, with a planned public consultation in November 2022. These reviews concluded that the Draft Law on Audiovisual Media Services is very well aligned with the 2018 AVMS Directive. However, Parliamentary elections were called and took place in June 2023. Unfortunately,

¹³ European Union for Freedom of Expression: Alignment of National Media Legislation with the EU Acquis and Media Standards: https://pmcg-i.com/news_show/694/European-Union-for-Freedom-of-Expression:-Alignment-of-National-Media-Legislation-with-the-EU-Acquis-and-Media-Standards.



at the time of writing (September 2023) a new government had not yet been formed and the draft Law has not yet been adopted.

In Kosovo, a Draft Law amending the Law on the Independent Media Commission (IMC), which regulates the establishment and functioning of the NRA and also incorporates all the provisions relevant for the regulation of the audiovisual media sector, was due to be sent to Parliament in September 2022. A further elaboration of the Draft in April 2023 went through a consultation process. The law is currently (status 25 September 2023) undergoing review in the Prime Minister's office.

In Serbia, the Action Plan and Strategy for development of the public information system recognised the need to amend the Law on Electronic Media, in order to achieve compliance with the new AVMS Directive.¹⁴ Draft Laws on Electronic Media and on Public Information and Media were published for public consultation on 7 September 2023.

In Georgia, a 2022 Draft Law (changes to the "Law on Broadcasting" of Georgia) was published with the aim to align the legal framework with the 2018 AVMSD. The amendments to the Law on Broadcasting of Georgia were adopted on 22 December 2022. Regarding the alignment, there are several areas where the updated law is still in need of further amendment – for example – regarding European Works, and some rules on audiovisual commercial communications, and certain provisions on video-sharing platforms. Two packages of amendments were also adopted by the Parliament on 19 October and 17 November 2023 regarding the protection of minors and the independence of the regulator respectively.

In Moldova, amendments to the 2018 audiovisual law, the Code of Audiovisual Media Services, were passed in 2021, 2022 and, more recently, in September 2023. Some areas of the legal framework are still not fully aligned with the 2018 AVMS Directive. Several initiatives were launched to address further reform, including a consultative group in the national Parliament that was intended to assist in the process of improving the legislative framework.

In Armenia, a new Law on Audiovisual Media was passed in 2020.¹⁵ A 2022 report of the Parliamentary Assembly of the Council of Europe (PACE) called on the Armenian authorities to adopt a comprehensive approach to reforming the media sector, including further alignment of the Law on Audiovisual Media with international standards on freedom of expression and other Council of Europe instruments.¹⁶ The Armenian government established a Working Group, which includes the NRA and the National Commission of Television and Radio of the Republic of Armenia (NCTR), to develop further amendments to the Law. Amendments to the Law were adopted in 2022 and 2023.

¹⁴ STRATEGY - development of the public information system in the Republic of Serbia for the period 2020-2025, "Official Gazette of RS", number 11 of February 7, 2020.

<https://www.pravno-informacionisistem.rs/SlGlasnikPortal/eli/rep/sqrs/vlada/strategija/2020/11/1/reg>.

¹⁵ More detail on developments regarding this law can be found in the Armenia Country report.

¹⁶ PACE Report 2022. »The functioning of democratic institutions in Armenia«: Report by the Council of Europe's Parliamentary Assembly; Doc. 15432, 10 January 2022; available at:

<https://pace.coe.int/en/files/29803>, p. 125.



In Tunisia, a Draft Law on Audiovisual Communication (2020) was published in 2020 but was withdrawn by the Government in October 2020 in order to hold more consultations. This would provide significant updates to the current (2011) Decree-law that covers the freedom of audiovisual communication and establishment of the NRA. There have been no recent developments regarding moves to push this law forward.

3.1.3. Development of new legislation: approaches and challenges

A common approach in many of the countries covered by this mapping is to engage stakeholders extensively in the development of draft laws. This contrasts with other countries where a ministry tends to develop draft laws that are discussed by the relevant parliamentary committees and then published for consultation with relevant stakeholders.

This is the case, for example, in Moldova where the parliamentary committee that oversees media reform instituted a consultative group of media experts from civil society organisations to contribute to the process of improving the legislative framework.

The development of the Draft Law on Audiovisual Media Services of September 2022 in Montenegro is probably an example of the most collaborative approaches in all the countries reviewed. The Draft was developed by the authorities of Montenegro following the work of a Working Group on Amendments to Media Laws. This working group consisted of 25 members from relevant institutions, the NRA, NGOs, and representatives of the media sector. The group met more than 25 times during one year to agree a comprehensive set of amendments.

In Serbia, a new Working Group was established by the Government in January 2023 to develop draft amendments to the audiovisual media legislation. Draft Laws on Electronic Media and on Public Information and Media were published for public consultation on 7 September 2023.

The alignment of the legal framework in North Macedonia (carried out in the context of an EU-funded project) involved extensive discussions and consultations with stakeholders in the elaboration of changes, and also included several public consultations and conferences to discuss the amendments.

The projects of reform of media legislative frameworks are reliant on political will at the national level. At the same time, there are many common challenges that can stall or delay these processes. These include instances of war and conflict (Armenia and Ukraine), national political and constitutional crises (Bosnia and Herzegovina, Tunisia), political instability and frequent elections (Montenegro). Several draft laws were put on hold as the laws also had the aim to legislate online news media and the proposed laws came under criticism at both the national and international levels (Albania, Ukraine).



3.2. Definitions, jurisdiction and freedom of reception

3.2.1. Alignment of definitions in national laws with the AVMS Directive

Nine definitions in the 2018 AVMS replicate those in the 2010 AVMS Directive (editorial responsibility, media service provider, television broadcasting, broadcaster, on-demand audiovisual media service, television advertising, surreptitious advertising, teleshopping, European works).

Five definitions changed in the 2018 AVMS Directive:

- Audiovisual media service – which now includes in the definition the extended phrase: “where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes”.
- Programme – this definition no longer contains the phrase: “the form and content of which are comparable to the form and content of television broadcasting”. In addition, “video-clips” are included in the concept.
- Changes related to audiovisual commercial communications (ACCS): “audiovisual commercial communication”, “sponsorship” and “product placement”. In order to be aligned with the Directive these definitions need references to user-generated videos, and to video-sharing platforms (VSPs).

The 2018 AVMS Directive introduced four new definitions for: “video-sharing platforms”, “user-generated content”, “editorial decision”, and “video-sharing platform provider” (with a total of 18 definitions in the new Directive). The table below indicates the extent to which current and draft legislation align with (respectively) the 2010 and the 2018 AVMS Directives.



Table 3. Detail of alignment of definitions

Definitions (Article AVMSD)	In line with 2010/13 AVMSD	Draft law changes now in line with 2010 /13 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partially in line	Not defined
Definitions that are the same in both Directives						
Editorial responsibility	AL, BA, ME, MK, GE, MD, UA (closely in line)	XK	AL, BA, ME, MK, GE, MD, UA (closely in line)	XK	RS, TN	AM
Media service provider	BA, MD, ME, MK, XK, RS,	GE, UA	AL, BA, MD, ME, MK, XK, RS, UA		AM, TN	
Television broadcasting/ television broadcast	AL, BA, GE, MD, MK, RS, XK		AL, BA, GE, MD, MK, RS, XK, UA	ME	TN	AM
Broadcaster	BA, GE, ME, MK, XK, UA, TN		BA, GE, ME, MK, XK, UA, TN		AM	AL, MD, RS
On-demand audiovisual media service	AL, AM, BA, GE, MD, ME, MK, RS, XK, UA		AL, AM, BA, GE, MD, ME, MK, RS, XK, UA			TN
Television advertising	AL, AM, BA, GE, MD, ME, MK, MD, RS, UA, XK		AL, AM, BA, MD, ME, MK, RS, UA, XK GE (close)	XK		TN (included in ACC)
Surreptitious ACC	AL, BA, MD, ME, MK, RS, XK, UA	TN	AL, BA, GE, MD, ME, MK, RS, XK, UA	TN		AM
Teleshopping	AL, BA, GE, MD, ME, MK, XK, RS, UA, TN		AL, BA, GE, MD, ME, MK, XK, RS, UA, TN			AM
European works	AL, BA, GE, MD, ME, MK, RS, UA		AL, BA, GE, MD, ME, MK, RS, UA	XK		AM, TN



Definitions that changed between 2010 AVMSD and 2018 AVMSD						
Definitions (Article 1 AVMSD)	In line with 2010 AVMSD	Draft law changes now in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partly in line	Not mentioned
Audiovisual media service	ME, RS (XK, MD, closely in line)	TN (closely in line)	AL, BA, MK, GE, UA MD (closely in line)	ME, RS, XK,		AM
Programme	ME, RS, XK, AM, TN		AL, BA, MK, UA GE, MD	ME, XK.	AM, RS	
Audiovisual commercial communication (ACC)	ME, MD, XK, RS, TN		AL, BA, MK, GE, UA MD (closely in line)	ME, XK RS (closely in line)		AM
Sponsorship	AM, ME, MD, RS, XK, TN (close)		AL, BA, MK, GE, UA, MD, RS (closely in line)	ME, XK		
Product placement	ME, MD, RS, XK, TN		AL, BA, MK, GE, UA MD, RS (closely in line)	ME, XK		AM

New definitions in the 2018 AVMSD						
Definitions (Article 1 AVMSD)	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partly in line	Not mentioned
Video-sharing platform service (VSP)	<i>Not applicable</i>	<i>Not applicable</i>	AL, BA, MK, UA GE, MD	ME, RS, XK		AM, TN
User-generated video	<i>Not applicable</i>	<i>Not applicable</i>	AL, BA, MK, GE, MD, UA	ME, RS, XK		AM, TN



Editorial decision	<i>Not applicable</i>	<i>Not applicable</i>	AL, BA, MK, GE, UA	ME, RS, XK		AM, MD, TN
Video-sharing platform provider	<i>Not applicable</i>	<i>Not applicable</i>	AL, BA, MK, GE, MD, UA	ME, RS, XK		AM, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

The majority of the countries covered in the mapping are aligned with the 2010 AVMS Directive, as amended by Directive 2018/1808, with regard to the nine definitions which have not changed. Several countries do not have separate definitions for “media service provider” and “broadcaster”. Others include television advertising in the definition of audiovisual commercial communications. Regarding the five definitions that changed, or those new definitions introduced in the 2018 AVMS Directive, several countries with recent new legislation (Albania, Bosnia and Herzegovina, Georgia, North Macedonia) are completely aligned. Other countries are very closely aligned (Ukraine) or closely aligned (Moldova) with the changes and additions to definitions in their recent legislation. Draft legislation in some countries completely (Serbia, Montenegro, Kosovo) aligns with these changes. The concept of editorial responsibility is still not completely harmonised across the eleven countries.

3.2.2. Other relevant definitions

Additional definitions were included in the national questionnaires and country reports, which are not clearly defined in the AVMS Directive.

For example, although the AVMS Directive contains no specific definition of “independent producer”, in the 2010 AVMS Directive¹⁷ the Recital states that: (71) “When defining ‘producers who are independent of broadcasters’ as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights.”

The review of the information collected from the national experts revealed that six countries had taken note of this guidance in their definitions (Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Ukraine). Some national frameworks (including draft laws) contain slightly different or non-aligned definitions (Albania, Georgia, Kosovo). The concept is not mentioned at all in the frameworks of two of the countries covered in the mapping (Armenia, Tunisia).

¹⁷ Directive 2010/13/EU.



Table 4. Further definitions relevant to the AVMS Directive and key values

Definitions relevant to the AVMSD	In line with standards	Partly in line	Not mentioned
Definition of independent producers	In current laws: BA, MD, ME, MK, RS, UA in terms of limiting cross-ownership (and other business relationships) between independent producers and broadcasters GE (close)	In current law: AL In draft Laws: XK	AM, TN
	Existence of definition	Links to themes	Not mentioned
Definition of harmful content	XK (the NRA Code of Ethics outlines a list of harmful content)	AL, GE, ME, MK, RS, UA (no specific definition) – concept is generally related to the protection of minors, depictions of harmful behaviour (BA); incitement to harmful or criminal behaviour (AM, BA) and discrimination (AM, MD); violation of personal dignity (AL, MD, ME, RS, TN); hate speech (AM, MD, TN)	
Definition of hate speech / incitement to hatred	Hate speech is defined in the Criminal Code (AL, AM), the Constitution (MD), in Guidance of the NRAs on hate speech (AL, MK), in rules on programme standards (ME)	BA, GE, MD, MK, RS, TN, UA, XK (No specific definition) but related to prohibition of content inciting hatred in all countries.	

Source: Response of national experts to European Audiovisual Observatory standardised survey

There were few clear definitions of harmful content. National experts referred to various aspects of the media legislation including: content that is harmful to minors; depictions of harmful behaviour and/or incitement to harmful behaviour; the violation of personal dignity; incitement to hatred, etc. The NRA Code of Ethics in Kosovo outlines a range of harmful content.

There were not many definitions of hate speech. National experts frequently referred to the prohibition of content inciting hatred. Hate speech is defined in the Criminal Codes in several countries (AL, AM), and also in Guidance of the NRA on hate speech (AL, MK), the latter two with reference to the Council of Europe Committee of Ministers'



Recommendation on Hate Speech.¹⁸ The national experts all indicated the areas of law where this is prohibited (discussed further under 3.3.1. below).

3.2.3. Jurisdiction, and the principle of freedom of reception and re-transmission

The AVMS Directive (under Article 2) outlines the criteria for the establishment of the jurisdiction of audiovisual media services, and Article 28a regarding VSPs. The article also provides for a procedure to solve disagreements regarding the jurisdiction of services.

Overall, the provisions of the Directive in relation to jurisdiction of audiovisual media services have not changed. There is a minor adjustment whereby the significant workforce of services is involved in the “pursuit of the programme-related audiovisual media service activity”, rather than “the pursuit of the audiovisual media service activity”.

Hence the table indicates the same levels of alignment with both versions of the AVMS Directive regarding Article 2 (paras 1-4). Article 28a, outlining the details for establishing the jurisdiction of VSPs, is also new. The significant changes to Article 2 involve the introduction of Article 2 (5a) and 5(b).

Table 5. Jurisdiction of audiovisual media services and jurisdiction of VSPs

Provisions related to jurisdiction	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Not mentioned
Article 2 (paras 1,2,3,4) AVMSD regarding jurisdiction of AVMS	AL, BA, ME, MK, RS MD (closely in line)		BA, GE, ME, MK, UA AL, MD (closely in line)	RS XK (closely in line)	AM, TN
Article 2 (5a) Requirement that AVMS providers inform the competent NRAs or bodies about any changes that may affect the determination of jurisdiction	Not applicable	Not applicable	AL, BA, GE, MK	ME, RS, XK	AM, MD, UA, TN

¹⁸ Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “hate speech”, <https://rm.coe.int/1680505d5b>.



Article 2 (5b) Requirement to maintain up-to-date list of the AVMS providers under national jurisdiction	Not applicable	Not applicable	AL, BA, GE, MK, MD, ME, RS, UA	ME, XK	AM, TN
Article 28a (par. 1-5) Regarding establishment of jurisdiction of VSPs	Not applicable	Not applicable	AL, BA, GE, MK, UA	ME, RS, XK	AM, MD, TN
Article 28a (par. 6) Requirement to maintain an up-to-date list of the VSP platform providers established or deemed to be established on their territory	Not applicable	Not applicable	AL, BA, GE, MK, MD, UA	ME, RS, XK	AM, TN
Article 28a (7) Role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing opinion on jurisdiction	Not applicable	Not applicable			AL, AM, BA, GE, MD, ME, MK, RS, TN, UA, XK,

Source: Response of national experts to European Audiovisual Observatory standardised survey

Regarding the requirement to maintain an up-to-date list of the AVMS providers under national jurisdiction, this already exist in respect of many NRAs. There are also many others which have long maintained such a list without being required to do so. Article 28a (7) is not mentioned in the legal frameworks as none of the countries are EU members and hence not members of ERGA. Several countries covered in this mapping are observers at ERGA meetings (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia). However, most countries already have general provisions in the law regarding cooperation with other regulators.

The AVMS Directive requires (under Article 3 (1)) that “Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.” It is important to note that, in many cases, the national legal frameworks also align with the requirements of the European Convention on Transfrontier Television (ECTT).¹⁹

The 2018 AVMS Directive introduced a range of changes with regard to derogations from this principle under Article 3 (2) of the Directive. The changes largely relate to the

¹⁹ <https://rm.coe.int/168007b0d8>



procedures to be followed in derogating from the principle, and the important role of the European Regulators Group for Audiovisual Media Services (ERGA).

Table 6. Freedom of reception and retransmission – and derogations

AVMSD and the freedom of reception and retransmission	In line with 2010 AVMSD and European standards	Draft law changes in line with 2010 AVMSD	in line with 2010 AVMSD, as amended by Directive 2018/ 1808 and European standards	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partly in line	Not mentioned
Article 3 (1) Ensuring freedom of reception and retransmission	AL, BA, MK, ME, RS, UA		AL, BA, GE, MK, ME, RS, UA	XK	AM, MD	TN
Article 3(2) Derogations from the principle of freedom of reception and retransmission	ME AL, UA (closely in line)		BA, MK, GE, UA (close)	ME, RS, XK	AL, MD,	AM, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

Regarding derogations, the majority of the covered countries, in particular the Group I countries, are fully or closely aligned with the 2010 AVMS Directive. As regards the changes introduced in the 2018 AVMS Directive, several countries have aligned with these in their legislation and others have updated the provisions in draft amendments. The Draft IMC Law in Kosovo introduced this principle and the system of derogations. Others are still partly aligned as the law refers to general principles whereby certain violations of content obligations can lead to derogations. Some laws in particular refer mainly to the ECTT (for example Albania). This principle is not really dealt with in Armenia and Tunisia.

Hence, there is a sense that it is not entirely clear to the national authorities to what extent the aligned legislation should include verbatim the provisions of the Directive under Article 3(2). It is also not entirely clear whether one system for dealing with services emanating from EU member states should be included and aligned with Article 3(2), while a second set of provisions should be introduced which align with the ECTT in relation to non-EU countries which are party to the Convention.



3.3. General principles and key values

This section provides a brief overview of the relevant legislative frameworks that promote and protect a range of general principles and key values (non-discrimination, prohibition of incitement to hatred and incitement to violence, and the prohibition of illegal content such as child pornography, racism and xenophobia, and incitement to terrorism). Other general principles and key values are part of specific provisions of the AVMSD and are therefore outlined in detail in other sections of this chapter.

3.3.1. Non-discrimination, prohibition of incitement to hatred, and incitement to violence

The table below outlines the extent to which general principles, such as non-discrimination and the prohibition of incitement to hatred, are addressed in a range of laws in each country, including in audiovisual laws, in the constitution or in criminal laws. In addition, many of the countries covered in this mapping have developed specific codes and guidance for audiovisual media services to deal with incitement to hatred.

Table 7. General principles: non-discrimination, prohibition of incitement to hatred, incitement to violence

Principles and prohibitions	Constitution	Mass media / information laws	Audiovisual laws	Non-discrimination / equality laws	Criminal code	Other codes and guidance
Principle of non-discrimination	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA, XK,	AL, RS	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA XK (draft)	AL, MD, TN, UA	AM, GE, ME, MK, UA	BA, GE, XK
Prohibition of incitement to hatred and incitement to violence	AM, GE, MD, ME, MK, RS, XK	AL, ME, RS, TN, UA,	AL, BA, GE, MD, ME, MK, UA RS, XK (draft law)		AL, AM, BA, GE, ME, MK, RS, UA, XK	BA, GE, MD, ME, MK, XK, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

3.3.2. Illegal content: Child pornography, racism, xenophobia, and incitement to terrorism

The 2018 AVMS Directive, under Article 6, prohibits content in audiovisual media services that incites hatred or violence. In relation to VSPs, under Article 28b, the directive requires that the public be protected from illegal content such as incitement to commit terrorism acts, the dissemination of child pornography, and content promoting racism and xenophobia. As outlined below, these types of content are prohibited in criminal laws in most of the countries.

Table 8. General principles: Prohibiting illegal content

Prohibitions	Constitution	Mass media / information laws	Audiovisual laws	Criminal code	Other codes/ guidance
Prohibition of provocation to commit a terrorist offence			AL, BA, GE, MK, UA (adopted laws and codes) ME, RS, XK (draft laws)	AL, AM, BA, GE, MD, ME, MK, RS, UA	BA, MD
Prohibition of child pornography			AL, BA, GE, MK, UA, (adopted laws and codes) ME, RS, XK (draft laws)	AL, AM, GE, MD, ME, MK, RS, UA, XK	MD, TN
Prohibition of content promoting racism and xenophobia	AM, BA, GE, MD, ME, MK, RS, XK	RS, TN	AL, BA, GE, MK, UA, (adopted laws and codes) ME, XK (draft laws)	AL, AM, BA, GE, MD, ME, MK, UA	BA, MD, ME, TN
General prohibition of content inciting any acts prohibited by law			AM, MK, RS		XK

Source: Response of national experts to European Audiovisual Observatory standardised survey

Most of those countries that have adopted legislative changes (or developed draft audiovisual laws) have included prohibitions of incitement to commit a terrorist offence, and of the dissemination of child pornography. This is especially the case in relation to obligations for VSPs. These issues are addressed in the criminal laws of all the countries. However, many of the current audiovisual laws address the problem of racism and xenophobia alongside (see above) issues of hate speech.



3.4. The principle of freedom of expression and freedom of the media

3.4.1. The legal frameworks protecting freedom of expression

The table below outlines the range of elements related to freedom of expression and freedom of the media that are enshrined in the legislative frameworks in the eleven countries. In all cases these freedoms are guaranteed in the Constitutions of the states and also in media and audiovisual media laws.

Table 9. Elements of freedom of expression enshrined in the legislative frameworks

Elements of FOE	Constitution	Mass media / information laws	Audiovisual laws	FOE law	Criminal code	Civil and defamation
Guarantee of freedom of expression	AL, AM, BA, XK, GE, ME, MD, MK, RS, TN, UA	AM, ME, MK, RS	AL, BA, GE, MD, ME,	MD, GE	AL, MD	XK
Freedom of the media	AL, AM, GE, XK, ME, TN	ME, MK, RS, TN, UA	AL, MD, TN, UA	MD, GE		
Prohibiting censorship	AL, XK, GE, MD, MK, TN, UA	AM, RS, UA,	AM, UA	MD		
Right to access / receive information	AL, AM, GE, ME, MD, MK, RS	ME, UA	MD, TN			UA
Independence of public TV ²⁰	AM					
Prohibits interference in the activities of broadcasters and operators		RS	AM, MD, UA	MD	MD	
Prohibits interference in the work of journalists	MK	AM, ME, RS, UA		MD	MD	

²⁰ As the themes covered in this research did not specifically cover public service broadcasting (PSB) or PSB laws, this section should not be construed as an assumption that PSB is not protected in other laws not included here.



Prohibits impeding the right to freedom of expression					AL	
Editorial independence			MD			
NRA safeguards / supports freedom of expression	TN	AL	XK, ME, MK, RS			
AVMS services must guarantee (or promote) freedom of expression		AL, RS	BA, MK			

Source: Response of national experts to European Audiovisual Observatory standardised survey

As illustrated above, there are extensive provisions throughout the legislative frameworks which aim to protect freedom of expression and freedom of the media. Several countries have specific laws on freedom of expression (Moldova and Georgia).

3.4.2. Freedom of expression and freedom of the media in practice

The following section provides an overview of common problems faced in the countries (to a greater or lesser degree) regarding freedom of the media in practice, while specific country details can be viewed in the country reports. An issue that arose in practically all the feedback from national experts concerned the safety of journalists and media workers. Attacks on journalists can be both physical or verbal, and a range of tactics such as smear campaigns are often used. In addition, physical attacks frequently are not investigated and hence go unpunished. These problems have been addressed in several reports of the European Commission (in relation to the countries in the mapping).²¹ Other restrictions on freedom of the media and the work of journalists include legal issues, which in some countries remain problematic regarding laws on insult or defamation, or the protection of journalists' sources, and which still lead to a chilling effect on freedom of expression. In some countries, experts noted a proliferation of legal actions against media outlets voicing opposition. Although not addressed in the context of this mapping, several national experts stressed that there was still a need to ensure the financial and editorial independence of public service media.

In all the countries included in this mapping there are concerns regarding the financial situation of the media sector and the issue of sustainability – as is the case with most European countries. Financial pressures present a threat to freedom of expression, as these can often lead to reliance on certain types of state funding. Problems regarding the

²¹ More detail on the European Commission opinions on these matters can be seen in the individual country reports. In addition, the country reports contain references to reports by organisations such as Human Rights Watch and Reporters Without Borders.



allocation of state advertising revenues and state funding for political advertising during elections etc. were noted. Concerns were expressed that there is potential for abuse of the media for political purposes, and that this can create a clientelist relationship between the media, the state, and political parties. Financial instability can also lead to a stronger reliance on business and political interests. The issue of media ownership and transparency of media ownership is addressed in more detail below (section 3.8.). Although most countries covered in this mapping have strong provisions regarding transparency of media ownership, the true ownership of media outlets is frequently opaque.

Disinformation, non-professional online media outlets, and the rise of hate speech are all issues that were referenced in the replies of the national experts to the questionnaire. The problem of disinformation is clearly a global concern. Several initiatives to legislate on this issue have emerged and been strongly criticised by national civil society organisations and international organisations. In most cases such initiatives have been stalled or cancelled. A particular characteristic of many of the media markets is the presence of large numbers of online media outlets (or news portals), many of which have not joined with, or subscribed to, the ethical standards of the national self-regulatory bodies. Also, in relation to this type of online media, initiatives to legislate in this area were often viewed as excessive by international organisations. Related to both the context of disinformation, and to the proliferation of online media outlets not subscribing to professional ethics, is the problem of hate speech, which is on the increase in most of the countries covered in this mapping. The search for effective solutions (in terms of self- or co-regulatory approaches) to this problem is ongoing in these countries.

Finally, there have been several crises that have impacted on freedom of expression. The COVID-19 pandemic has given rise in many countries to measures that impact the work of journalists, the right to access to information, and the general freedom of the media. At the same time, the pandemic has also increased the incidence of disinformation.

In Armenia, the 2020 Nagorno-Karabakh conflict and the COVID-19 pandemic both led to an unprecedented level of disinformation and hate speech, and also restrictions on freedom of the media by the state according to the national expert. This conflict has erupted again in September 2023.

The ongoing conflict between Russia and Ukraine, followed by the Russian invasion of Ukraine in 2022, has led to the blocking of reception of Russian media in Ukraine. While international organisations have expressed concern about this situation in the past, after Russia's invasion of Ukraine, similar actions took place regarding the blocking of Russian channels at the level of the European Union after the outbreak of the war.

Tunisia has been in the midst of political crisis for two years: In 2021, President Kais Saied dismissed the government, froze the legislature and assumed emergency powers, and on 25 June 2022, Tunisia voted in favour of a new constitution via a referendum. Although the referendum turnout was very low, the new Constitution has resulted in significant powers being attributed to the President to the detriment of parliamentary democracy. Parliamentary elections are due on 17 December 2022, and thousands of protesters have



taken to the streets.²² According to updates from the Council of Europe, arrests of activists and journalists in Tunisia continued throughout 2023, and one journalist was sentenced to five years in prison. A presidential Decree from 2022 introduced criminal sanctions regarding false news and rumours and has also been used to arrest and convict six journalists.²³ In June the UN High Commissioner for Human Rights called on the authorities to stop restricting media freedoms and criminalising independent journalism.²⁴

3.5. The principle of independence of national media regulatory authorities

The 2010 AVMS Directive stressed the role of “competent independent regulatory” bodies with regard to the implementation of the Directive (Recital para. 94). The Directive also encouraged co-operation between regulatory bodies (Recital para. 95, and Article 4(17)). The former Article 30 focused on the need for cooperation and exchange of information between NRAs and with the European Commission. With the 2018 AVMS Directive, the provisions regarding independence were strengthened under Article 30.

3.5.1. The legal framework for independence of NRAs

The table below illustrates that the 11 countries covered in this mapping have already included the majority of requirements regarding the independence of NRAs in their current legislative framework.

²² BBC World News (15 October 2022), “Tunisia: Thousands from rival political parties protest against President Kais Saied”, <https://www.bbc.com/news/world-africa-63271812>.

²³ Decree-law No. 54 of 2022 on the fight against crimes relating to information and communication systems

²⁴ <https://www.ohchr.org/en/press-releases/2023/06/tunisia-crackdown-media-freedoms>



Table 10. Independence of National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with 2010 AVMSD, as amended by Directive 2018/1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/1808	Not mentioned
NRAs should be legally distinct from, and functionally independent of, government	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA, XK		
NRAs should exercise their powers impartially and transparently	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA, XK		
Clear definition of the competences and powers of the NRAs outlined in the law	AL, AM, BA, GE, MD, ME, MK, RS, TN, UA, XK		
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets	AM, GE, MK, ME, RS, TN, UA, XK AL, BA, MD (partly in line)	ME, RS (strengthened)	
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	AL, AM, BA, MK, RS, TN, UA, XK ME, GE (closely in line) MD (partly aligned)	ME (strengthened)	
Existence of effective and independent appeal mechanisms	AL, BA, GE, MD, ME, MK, RS, TN, UA, XK AM (partly in line)		
Provisions in the law that support cooperation between NRAs	AL, AM, BA, GE, ME, MK, RS, UA		MD, XK, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

For the most part, all of the provisions under Article 30 of the AVMS Directive covering the principle of independence of the NRA are already enshrined in the national legislative frameworks in the 11 countries in the study. This is largely due to the influence of Council of Europe (CoE) standards, and CoE work in this area. A recent report completed by the European Audiovisual Observatory discusses the important role played by the CoE, which has published extensive recommendations regarding the institutional design of NRAs, which provide concrete and comprehensive guidelines on how to achieve independence and maintain efficient functioning.²⁵ The report also noted the CoE’s work, in all of the countries included in this mapping, supporting the development of media legislation in line with European standards.

²⁵ Cappello M. (ed.), “The independence of media regulatory authorities in Europe”, IRIS Special, European Audiovisual Observatory, Strasbourg, 2019, <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.



3.5.2. The independence of the NRA in practice

In the table above, certain national provisions have been labelled as partly aligned with the AVMS Directive, according to national experts. This is in particular the case with the very detailed requirement that NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets. In many cases, the NRAs do not have their own budgets, where the budget (or a part thereof) comes from the national budget. This can lead to situations where the NRA does not have direct control over its funds. Where the state budget is not adopted on time, the funding for the NRA is also delayed. It can also happen that the government gradually decreases funding to public organisations such as the NRA, contrary to the requirements of the law.

There are also instances where part of the funding of NRAs comes from donations and sponsorships, which might give rise to uncertainty regarding budgets. A recent OSCE Expert Report on the situation in Armenia suggested that it is necessary to provide further legislative guarantees for the NRA so that it can count on sufficient funds in order to perform its activities in an efficient, proper and independent manner. A further recommendation was to employ a system comprising a long-term, five-year budget, with an indexation for inflation. The Law on Media in Ukraine aimed to strengthen some of these provisions, where for example it emphasised that the state shall ensure adequate financing of the activities of the National Council (NRA), in order to ensure its independence.

A lack of sufficient finances, human resources and administrative capacity can impede the possibility for the NRA to enforce the EU acquis. In addition, it can also impact on the potential for the NRA to fulfil duties which require significant resources, such as the monitoring of media coverage during elections. Experts also stressed the need to enhance expertise, in particular given the new challenges of dealing with issues such as platform regulation, hate speech and disinformation, and other emerging trends.

Another issue raised by national experts was the fact that the powers of enforcement are sometimes limited, or implementation or enforcement of the law is dependent on the approval of other bodies (for example in Ukraine and Serbia). In Ukraine, although the National Council can issue recommendations, these need to be sanctioned by other institutions in order to be enforced, implying that the National Council cannot be entirely independent of other executive authorities. In its 2021 Report on Montenegro, the European Commission also stated that the Agency for Electronic Media still lacks the authority and measures to effectively monitor and penalise broadcasters. Regarding Montenegro, the Draft Law proposes improvements in this regard.

In Serbia, the 2020 Strategy for development of the public information system²⁶ recommended that the media legislation be amended to allow for the Regulatory Authority for Electronic Media to impose monetary sanctions in addition to existing measures in case of violation of regulations. Currently, the NRA does not have the possibility to issue

²⁶ Strategy - development of the public information system in the Republic of Serbia for the period 2020-2025. "Official Gazette of RS", number 11 of February 7, 2020, <https://www.pravno-informacionisistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/11/1/reg.>



sanctions other than warnings or revocation of the licence. Some of these issues have been addressed in the Draft Law (2023).

A key issue concerns the appointment and dismissal of members of Councils and of Directors of NRAs. Despite the fact that procedures related to this are clearly laid out in the various legislative frameworks, this does not always guarantee complete political independence. These appointments can often be delayed, sometimes for years, due to the need for agreement between political parties in the parliament (North Macedonia, Serbia, Tunisia).

Although the amendments to the law in North Macedonia adopted in July 2023 fully aligned the legal framework with the Directive, additional amendments were sent to the Parliament in North Macedonia on 2 November 2023,²⁷ which undermine the competences and powers of the NRA. Although the NRA has a specific competence to decide on renewal of licences, the proposed amendments remove the provision that states that the NRA should take into consideration the contribution of the broadcaster for greater variety and pluralism on the market. In addition, the proposed amendments introduce two specific defined criteria for decisions on renewal of licensing – hence seriously undermining the competence of the NRA to decide on any other criteria. Of particular concern is that one condition of renewal that licences should be automatically renewed where a service has only twice broadcast the illegal content outlined under Articles 6 and 28b of the Directive (including reference to provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia). It is only three incidents of the above that would lead to a non-renewal of the licence. In addition, if these provisions are adopted, the NRA will not be able to consider any other repeated violations as criteria for refusing the extension of licences, for example: regarding the protection of minors; or refusal or failure to provide accessibility for people with disabilities; or continued violations of rules on audiovisual commercial communications, sponsorship or product placement etc.

The law in Bosnia and Herzegovina provides for the possibility of an indefinite repetition of the procedure for the appointment of the Communications Regulatory Agency Council until political agreement is reached within and between the Parliament and the Council of Ministers. In Moldova, the law allows for the Parliament to reject the annual activity report of the Audiovisual Council and therefore dismiss the entire body, as happened in November 2021.

In most cases, there is a positive element in that civil society organisations play an important role in nominating some of the members to these bodies. Despite this, given the complexities of the nominations and the procedures for voting in Parliament, there still remains the problem that many of the members of governing bodies tend to have strong political affiliations.

²⁷ Among others, these amendments aim to introduce a fund for state campaigns, obliging the Government to spend a fixed amount of public funds on these campaigns and outlining the allocation of the money between the different media outlets (see the report on North Macedonia below).



3.6. The protection of minors

This section deals with the protection of minors in the AVMS Directive. It covers the protection of minors from harmful content in audiovisual media services (both linear and non-linear) (Article 6a), and the protection of minors in relation to audiovisual commercial communications (ACCs) (in both linear and non-linear services) (Article 9).

3.6.1. The legal framework for the protection of minors

The table below outlines the framework for protecting minors in the current and draft laws. Some changes were made between the two Directives. The 2010 AVMS Directive distinguished between content that “might seriously impair the physical, mental or moral development of minors” and content “likely to impair the physical, mental or moral development of minors”. The 2018 AVMS Directive instead emphasises that the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures. Hence, legal frameworks are likely to be aligned with both if the most harmful content is subject to the strictest measures.

Table 11. Protection of minors

AVMSD and the protection of minors	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/1808	Partly in line	Not mentioned
Obligation to protect minors from harmful content, via watershed / scheduling, age verification tools or other technical measures	AL, BA, GE, MD, ME, MK, RS, UA, AM, TN, XK (closely in line)	UA,	AL, BA, GE, MD, ME, MK, RS, UA, TN AM, XK (closely in line)	ME, XK (strengthened)		
Prohibition of commercial use of personal data of minors collected when implementing these measures	Not applicable	Not applicable	AL, BA, GE, MK, UA	ME, RS, XK,		AM, MD, TN
Informing viewers about potentially harmful content	AL, AM, BA, GE, MD, ME, MK,		AL, AM, BA, GE, MD, ME,			



AVMSD and the protection of minors	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partly in line	Not mentioned
(content rating systems, visual or acoustic signals)	RS, TN, UA, XK,		MK, RS, TN, UA, XK			
Bans, 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	AL, AM, ME, TN XK (closely in line)		AL, BA, GE, MD, MK, RS, UA, AM, ME, TN, XK (closely in line)	ME, XK,		
That ACCs shall not cause physical, mental or moral detriment to minors	AL, AM, BA, GE, MD, ME, MK, RS, UA, XK,		AL, AM, BA, GE, MD, ME, MK, RS, UA, XK,		TN	
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	ME, MK, RS (possible to develop a code of conduct)		AL, BA, MK, RS, UA GE, ME, (partly in line)	XK ME	TN	AM, MD,
Prohibiting of product placement in children's programmes	AL, BA, MD, ME, MK, RS, XK,		AL, BA, GE, MD, ME, MK, RS, UA, XK,			AM, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

Alignment with the rules on the protection of minors is strong in the countries covered in this mapping, and for the most part newly adopted legislation and new draft laws have fully



aligned with the new provisions and with the changes to current provisions in the AVMS Directive.

The new rules include the prohibition of commercial use of personal data of minors collected when implementing this technical protection (this is included in relation to both audiovisual media services and to VSPs). This prohibition has been included in most of the recent draft laws.

The 2018 AVMS Directive requires that there be effective protection of minors from exposure to advertising for tobacco products and alcohol. Advertising for tobacco and tobacco products is prohibited in all the covered countries. All of the countries have provisions related to ACCs for alcohol, but it is difficult to state whether the provisions are effective. Although not addressed in this mapping, the AVMS Directive under Article 9(3), recommends the use of co-regulatory codes (as provided for in Article 4a(1)) to address the requirement to ensure an effective reduction of exposure to minors to ACCs for alcohol and HFSS foods. Several national experts noted that laws address the potential development of co-regulatory codes. Provisions related to the obligations of VSPs with regard to protecting minors are covered under Section 3.11 below.

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

Whereas the 2010 AVMS Directive obliged states to “encourage” media service providers to increase the amount of accessible audiovisual media content, the 2018 AVMS Directive strengthens the obligation of audiovisual media service 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”.

3.7.1. The legal framework regarding accessibility

The extent to which the legal frameworks align with the 2010 AVMS Directive, or implement the changes in the 2018 AVMS Directive, are outlined below.



Table 12. Accessibility of audiovisual content

AVMSD and accessibility of audiovisual media services (Article 7)	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/1808	Partly in line	Not mentioned
Ensuring - without undue delay - that services provided by audiovisual media service providers are made continuously and progressively more accessible	AL, AM, MD, ME, RS, TN, XK, UA (as AVMS encouraged to provide accessible content)		AL, BA, GE, MK, UA	ME, RS, XK	RS via recommendation AM (strengthened)	
Audiovisual media service providers should report on this to the NRAs. Audiovisual media service providers are encouraged to develop action plans in this area and should communicate these to the NRAs	Not applicable	Not applicable	AL, BA, GE, MK, UA	ME, XK RS (closely in line)		AM, MD, TN
States should provide a public online point of contact for providing information and receiving complaints	Not applicable	Not applicable	AL, BA, GE, MK, UA	ME, RS, XK	UA (requirement for broadcasters) to deal with complaints)	AM, MD, TN
Emergency information should be in accessible formats	Not applicable	Not applicable	AL, AM, BA, GE, MK, UA	ME, RS, XK	RS via recommendation	MD, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

As illustrated above, for all of the countries covered in the mapping, before the adoption of new legislation the legal frameworks aligned with the former requirements in relation to accessibility, i.e. that audiovisual media service providers should be encouraged to provide accessible audiovisual media content, without any particular plans or goals in this regard. The updated requirements have been completely addressed in the newly adopted legislation in five countries (Albania, Bosnia and Herzegovina, Georgia, North Macedonia, Ukraine) and in the draft laws in three countries (Montenegro, Serbia, Kosovo).



In 2019, the Serbian Regulator, the Regulatory Authority for Electronic Media, issued a Recommendation on better accessibility of programme content for persons with disabilities, which covers many of the issues in the new provisions. In Serbia, the law requires communication between the NRA and media service providers, in the context of the NRA encouraging the media service providers to make their content accessible.

In 2020, In North Macedonia, the Agency for Electronic Media prepared guidance on “How to provide information for persons with sensory impairments – Approach, services, programmes, materials and alternative formats”.

While these measures were not binding on the audiovisual media services, they both provided good examples of the proactive work of the NRAs in this area.

3.8. Transparency of media ownership

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 Directive requires a minimum of public information about services (Article 5), and the maintenance of national lists of media services (Article 2).

3.8.1. The legal framework for transparency of media ownership

The basic requirement for audiovisual media service providers to publicly display a range of contact information is present in both Directives. The legal frameworks in most of the countries in the mapping are already aligned with these obligations. In addition, the majority of countries already have a requirement in the law to maintain up-to-date lists of national audiovisual media service providers. Even where there is no requirement, all the NRAs maintain lists of national audiovisual media service providers.

Table 13. Transparency of media ownership

AVMSD and transparency of media ownership	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partly in lin	Not mentioned
Requirement for AVMS provider to provide publicly accessible information on the following: name;	AL, BA, MD, ME, MK, RS, TN	XK, UA,	AL, BA, MD, ME, MK, RS, TN, UA,	XK	AM, GE (data to regulator only)	



AVMSD and transparency of media ownership	In line with 2010 AVMSD	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Partly in line	Not mentioned
address at which it is established; email address or website; the state having jurisdiction over it and the competent NRA						
Possibility to also require AVMS providers to make accessible information on their ownership structures	Not applicable	Not applicable	AL, AM, MD, ME, RS, GE, UA	ME (now includes VSPs)	BA (was challenged) XK, MK TN (sent to NRA only)	
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	Not applicable	Not applicable	AL, BA, GE, MD, ME, MK, RS, UA	XK	AM (this is done by regulator)	TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

From the table above, it is apparent that the majority of the countries covered in the mapping have quite strong rules regarding transparency of media ownership. In particular the requirement to publicly display a range of contact information is already part of the framework in eight countries (Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Tunisia, Ukraine), and this has been added in the draft legislation in Kosovo.

Regarding whether the law also requires audiovisual media service providers to make accessible information on their ownership structures, this is the case in the current law in five countries (Albania, Armenia, Moldova, Serbia, Georgia, Ukraine). In a range of countries, this information is sent to the NRA and not necessarily made public (Kosovo, Montenegro, North Macedonia, Tunisia), but the information is made public in Montenegro and North Macedonia via the NRA.

3.8.2. Transparency of media ownership in practice

As noted above (section 3.4.2.), a particular characteristic of many of the media markets in this mapping is the presence of large numbers of online media outlets (or news portals). The lack of transparency regarding ownership of many (but not all) of these news portals



has been cited as problematic in several countries covered in the mapping. As noted by one national expert (Montenegro): “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.” Similar problems were noted in other countries (Albania, Bosnia and Herzegovina, North Macedonia, Ukraine).

It should be noted that national experts also frequently noted that the media transparency rules for traditional broadcasters and media outlets did not always guarantee a real picture of ownership due to the use of off-shore accounts and foreign ownership. National experts also noted the existence of links between political and business interests and the media.

More detail on other relevant issues such as the existence of regulation on media ownership and policies regarding the promotion of media pluralism are also addressed in the country reports. The majority of countries covered in the mapping have media ownership rules (in terms of concentration). In Bosnia and Herzegovina, there are no laws that regulate the concentration of domestic and foreign ownership in media and advertising, nor are there any that require transparency in media ownership. Efforts to gather data on ownership structures and make it public in Bosnia and Herzegovina were successfully blocked following a case brought to the Data Protection Authority. In Albania, the Association of Albanian Electronic Media managed to repeal some of the media ownership rules at the Constitutional Court.

The NRAs frequently play an important role in the promotion of pluralism, also by regularly publishing data and reports on media ownership and pluralism in the market (Albania, North Macedonia, Tunisia). Pluralism of the media is usually a principle that is guaranteed in the relevant audiovisual media laws, but few specific policies or strategies (outside of media ownership rules) were identified. In Montenegro, the Agency for Electronic Media manages a special fund aimed at the promotion of media pluralism and diversity.

3.9. Promotion of European works

A key aim of the AVMS Directive is the promotion of European works – achieved by placing quota requirements on broadcasters (Article 16) and requirements on broadcasters that support the independent production sector (Article 17). The 2018 AVMS Directive has also increased the obligations of non-linear on-demand audiovisual services regarding the promotion of European works (Article 13).



3.9.1. The promotion of European works by linear services

As can be seen below, the majority of countries in the mapping are already aligned with the requirements for linear services (Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia). Kosovo has introduced provisions in the Draft Law with a 30% quota. In some countries, there remains a more general requirement to promote such works without a quota system (Georgia).

Table 14. Promotion of European works on linear services

AVMSD and the promotion of European works (linear services) (Articles 16 and 17)	In line with 2010 and 2018 AVMSD	Draft law changes in line with 2010 and 2018 AVMSD	Partially in line	Not mentioned
The use of majority quota obligations (for example more than 50% of content) to promote European works	AL, BA, MD, ME, MK, RS, UA	XK (partly as quota is 30%)	GE, (general requirement to promote – provision to be updated)	AM, TN
Exceptions to this rule	AL, BA, GE, MD, ME, MK, RS, UA	XK,		AM, TN
Rules where a minimum percentage of content (for example 10%) should be European works created by producers who are independent of broadcasters	AL, BA, GE, MD, ME, MK, RS, UA	XK,		AM, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

In Georgia, the word “majority” is absent in relation to linear AVMS due to a technical error in the law, and this will be addressed by Parliament in the near future.

3.9.2. The promotion of European works by on-demand services

Previously (under the 2010 AVMS Directive), non-linear on-demand audiovisual services were required to “promote, where practicable and by appropriate means, the production of and access to European works”. Such promotion could relate to financial contributions to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes that the on-demand audiovisual media services offered. The 2018 AVMS Directive increased the obligations regarding the



promotion of European works (Article 13) and introduced a minimum of 30% of European works in the catalogues of on-demand services, and the prominence of such works.

Table 15. Promotion of European works on on-demand audiovisual services

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD 2010	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/1808	Partly in line	Not mentioned
Requirement that media service providers of on-demand audiovisual media services secure at least a 30 % share of European works in their catalogues and ensure prominence of those works	ME, MK, RS (general obligation to promote European works)		AL, BA, GE, MK, MD, UA	ME, RS, XK		AM, TN,
Exemptions for media service providers with a low turnover or a low audience			BA, MK, GE,	ME, RS		AL, AM, MD, TN, UA, XK
Reference to European Commission guidelines on a) calculation of the share of European works, and b) definitions of low audience and low turnover of services			BA, GE, ME, MK, (to be addressed in by-laws / rules)			AL, AM, MD, RS, TN, UA, XK
Financial contribution obligations for services targeting the country				XK		AL, AM, BA, GE, MD, ME, MK, RS, TN, UA,

Source: Response of national experts to European Audiovisual Observatory standardised survey

Regarding the increased obligations for on-demand services vis a vis European works, this issue has been addressed in many of the new legislations (Bosnia and Herzegovina, Georgia, North Macedonia) and partly addressed in other new legislations (Albania, Moldova, Ukraine). The provisions are also included in several draft laws reviewed for this mapping



(Montenegro, Serbia). Regarding the introduction of financial obligations on services targeting the country, only Kosovo appears to have introduced rules requiring that on-demand service providers offering services in Kosovo must contribute to national production.

3.10. 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 the rules regarding prohibited ACCs in relation to certain goods and services.

The majority of rules on ACCs did not change with the 2018 AVMS Directive, although as noted above many definitions changed to include reference to ACCs on VSPs and in user-generated content. The rule on proportion of ACCs in the daily schedule was liberalised to allow the audiovisual media services to have more flexibility and ensure a 20% limit in daily periods rather than in every hour.

Table 16. Audiovisual commercial communications (ACCs)

AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD 2010	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Not mentioned
ACC should be recognisable; Surreptitious ACC shall be prohibited and ACC shall not use subliminal techniques	AL, BA, MD, ME, MK, RS, TN, UA, XK		AL, BA, GE, MD, ME, MK, RS, TN, UA, XK		
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	AL, BA, MD, ME, MK, RS, UA, XK TN (closely)		AL, BA, MD, ME, MK, RS, UA, XK GE, TN (closely)		



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD 2010	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Not mentioned
ACC for the prescription of medicinal products and medical treatment shall be prohibited	AL, BA, MD, ME, MK, RS, UA, XK		AL, BA, MD, ME, MK, RS, UA, XK GE, (closely)		TN
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	AL, BA, MD ME, MK, RS, XK		AL, BA, GE, MD ME, MK, RS, UA, XK	TN	
No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes	BA, MD, ME, MK, XK RS, GE, TN (closely)		AL, BA, GE, MD, ME, MK, UA, XK RS, TN (closely)	XK	
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	AL, BA, GE, MD ME, MK, RS, TN, XK		AL, BA, GE, MD ME, MK, RS, TN, UA, XK		
Viewers shall be clearly informed of the existence of product placement in a programme	BA, GE, MD, ME, MK, RS, TN, XK		AL BA, GE, MD, ME, MK, RS, TN, UA, XK		
Limiting the proportion of television advertising spots / teleshopping spots throughout the day, or during particular time periods	MD, ME, RS, TN, UA (closely in line)		AL, BA, GE, MK, UA,	ME, XK	
Are there exceptions to these rules, for example for self-	AL, BA, GE, MD, MK, RS, UA		AL, BA, GE, MD, MK, RS, UA	ME, XK	TN



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD 2010	Draft law changes in line with 2010 AVMSD	In line with 2010 AVMSD, as amended by Directive 2018/ 1808	Draft law in line with 2010 AVMSD, as amended by Directive 2018/ 1808	Not mentioned
promotion, sponsorship, product placement?					

Source: Response of national experts to European Audiovisual Observatory standardised survey

From the table, it is apparent that the majority of countries covered in the mapping are very well aligned with the AVMS Directive as regards rules on ACCs. Certain adjustments have been made in new legislation and in draft laws to include more programmes in those where sponsorship is not allowed, or to include e-cigarettes where tobacco products are mentioned.

3.11. Provisions applicable to video-sharing platforms – VSPs

A key change in the AVMS Directive following the 2018 amendments is the inclusion of video-sharing platforms (VSPs) in the scope. The definitions relevant to VSPs were addressed under Section 3.2.1. above and the procedure for the establishment of jurisdiction of VSPs (Article 28a) was addressed under Section 3.2.3. above. Article 28b of the AVMS Directive outlines the obligations placed on VSPs.

3.11.1. Content obligations on VSPs

Nine countries have so far – to varying degrees - addressed the issue of including VSPs in the national legislative frameworks: Moldova (in the 2020 law), Bosnia and Herzegovina (in the newly adopted Code of 2023), Ukraine (2022 amendments), North Macedonia (2023 amendments), Albania (2023 amendments), Georgia (2022) and in draft legislation (Montenegro, Serbia and Kosovo).



Table 17. Obligations on video-sharing platforms regarding content (VSPs)

AVMSD and provisions relating to VSPs 28b	In line with 2018 AVMSD	In line with 2018 AVMSD in the draft laws	Not yet in line
Protecting minors from harmful content in programmes user-generated videos and ACCs; protecting the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred, and from criminal content (provocation to commit a terrorist offence; child pornography; racism and xenophobia)	AL, BA, MK, MD, UA GE (Partly)	ME, RS, XK	AM, TN
VSP providers need to comply with the obligations (Article 9(1)) regarding the ACC they control (market, sell or arrange), and those controlled and uploaded by others	BA, GE, MK, AL, UA (closely aligned)	ME, RS, XK,	MD, AM, TN,
VSPs should clearly inform users where programmes and user-generated videos contain ACC	BA, MK, UA AL, GE (closely in line) GE (partly in line)	ME, RS, XK	MD, AM, TN
VSP should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	AL, BA, MK, UA	ME, XK	GE, MD, AM, RS, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

The requirements outlined above are completely incorporated in new legislation in three of the countries (Bosnia and Herzegovina, North Macedonia, Ukraine), and closely aligned in others (Albania). They are also incorporated in the draft laws in two other countries (Montenegro, Kosovo) and closely aligned in others (Serbia).

The new Georgian legislation partly covers the obligations on VSPs. The law in Ukraine recently included the provisions on ACCs via amendments to the Law on Advertising (2023). The recent Moldovan legislation (2020) did not address issues of ACCs in relation to VSPs, and this may be as the Law on Advertising needs to be updated. The Serbian Law on Advertising will also need further adjustment to completely align with the Directive.

3.11.2. Obligations on VSPs: Measures and supervision

The 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



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

Table 18. Obligations on video-sharing platforms – measures and supervision

AVMSD and provisions on VSPs (Article 28b)	In line with 2018 AVMSD	In line in draft laws	Not mentioned / not yet in line
Measures introduced by national rules?			
Adapting terms and conditions for users of VSPs to include obligations relevant to content and/or ACCs;	BA, GE, MK, UA MD (in relation to terrorist content)	ME, XK	AL, AM, RS, TN
Possibility to declare the presence of ACCs in user-generated video	BA, GE, MK, UA	ME, XK	AL, MD, AM, RS, TN
Reporting or flagging systems to report harmful content to the VSP provider	BA, GE, MK UA (partly) MD (more notification / take-down system)	ME, XK	AL, AM, RS, TN
Age verification systems for users	BA, GE, MK, UA, MD	ME, XK	AL, AM, RS, TN
Content-rating systems for users	BA, MK	ME, XK	AL, GE, MD, AM, RS, TN, UA
Parental control systems	BA, GE, MK, UA, MD	ME, XK	AL, AM, RS, TN
Procedures for complaints to the VSP	BA, GE, MK, UA, MD (more notification / take-down)	ME, XK	AL, AM, RS, TN
Providing media literacy measures and tools and raising users' awareness of those measures and tools	BA, GE, MK	ME, XK	AL, MD, AM, RS, TN, UA
Implementation and supervision			
Protection of the personal data of minors	BA, GE, MK, UA,	ME, XK	AL, MD, AM, RS, TN
NRA tasked with assessing the appropriateness of the measures taken by VSPs	BA, MK MD GE, UA (partly)	XK, ME	AL, AM, RS, TN
Are there out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and can users	BA, MK MD	ME, XK	AL, AM, GE, RS, TN



assert their rights before a court in relation to VSPs?	UA (partly)		
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	BA, MK, UA MD	ME, XK	AL, GE, XK, ME, AM, RS, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

Regarding the types of measures to be used, new legislation (in North Macedonia) and new regulatory codes (Bosnia and Herzegovina) have included reference to all of the measures outlined in the AVMS Directive. The new Georgian and Ukrainian laws cover most of these issues. The draft Laws in Montenegro and Kosovo also include all of the measures outlined in the AVMS Directive. For the most part, it will be for the VSPs to decide which measures are appropriate to achieve the aim of meeting their obligations, while the NRAs will be tasked with assessing the appropriateness of the measures. The new Albanian Law does not mention the range of appropriate measures detailed in the AVMS.

The Serbian Draft Law does not mention any specific measures as this is intended to be further elaborated in a by-law or rulebook of the regulatory authority.

In most cases, it is expected that further by-laws will be drafted to clarify the system for assessment of the appropriateness of the measures taken, and the role of the NRAs. Three countries have clearly addressed the availability of out-of-court redress mechanisms in their laws (and two via draft laws), while also assuring that users can assert their rights before a court.

In the case of Moldova, the obligations for VSPs are entirely focused on content relating to terrorism, and the measures described are just a notification and take-down of content approach.

Four new laws and two draft laws explicitly reference encouraging VSPs to exchange best practice regarding co-regulatory codes.

3.12. Conclusions

The aim of this research was to provide information to the European Commission Creative Europe Programme in order to facilitate the evaluation of a range of countries with regard to the alignment of the national legislative frameworks with the AVMS Directive, and the inclusion of a range of general principles and key values promoted by the AVMS.

The relevant national frameworks included media and/or audiovisual media laws, and also reference to constitutional provisions, which are important sources for general principles such as freedom of the media, and the principle of non-discrimination. Regarding certain types of illegal content, national Criminal Codes were an additional source for the prohibition of discrimination, incitement to hatred and hate speech, incitement to violence or terrorism, and provisions concerning child pornography.



For the most part there has been a very strong momentum in the 11 countries to push forward with reform of the media legislative framework. Two countries – Armenia and Moldova – recently (2020) enacted laws on audiovisual media, both of which were placed under review in order to completely align with the EU acquis. There have been five additional updates to legislation intended to align the national media legislative framework with (among other things) the AVMS Directive included in the analysis here. These laws, amendments (or codes) were adopted in Albania, Bosnia and Herzegovina, North Macedonia Georgia, and Ukraine.

The draft law in Montenegro has been delayed due to elections in June 2023. In Kosovo the Draft Law on IMC (2023) is currently under review at the Office of the Prime Minister. Finally, the Serbian Government published a draft law for consultation in September 2023.

Related to this, it is important to note that there tends to be a tradition of developing a strong and broad consultative approach to the development of amendments to media laws in several countries. Examples include the establishment of dedicated working groups comprising a range of stakeholders, which took place in Montenegro and Moldova. The National NRAs also play a significant role in most countries in the development of legislative proposals.

The criteria for establishing jurisdiction of linear media services are included in the audiovisual media laws of many of the countries – in particular the Group I countries (for example, AL, BA, ME, MK, RS). The significant changes to Article 2 with the introduction of Article 2 (5a) and 5(b) are reflected in most of the new legislation and the current draft legislation. The principle of freedom of reception and freedom of retransmission is also enshrined in the legislation in the majority of countries (AL, BA, MK, ME, RS, UA). Changes to the procedures for derogations are reflected in much of the new legislation. However, all the legislation has not fully included the procedures outlined in the Directive and the role of the ERGA. There is a sense that there is no common approach to alignment with Article 3(2).

General principles such as non-discrimination and the prohibition of incitement to hatred are addressed in a range of legislation including audiovisual laws, the constitution and also criminal laws. The prohibition of illegal content such as incitement to commit terrorism acts, the dissemination of child pornography, and content promoting racism and xenophobia tends to be part criminal laws in most of the countries. Illegal content has been added in new and draft legislation in most countries.

There are extensive provisions throughout the legislative frameworks which aim to protect freedom of expression and freedom of the media. Censorship is prohibited in all countries. Frequently, the media or press laws are sources of additional protection for the work of journalists and/or to prohibit interference in the activities of broadcasters (unless specifically prescribed by law). Many of the national frameworks refer to the role of the NRA in supporting/safeguarding freedom of expression. Some also oblige audiovisual media services to guarantee freedom of expression.

In all of the countries there are detailed provisions in the legislative frameworks protecting freedom of expression and freedom of the media. These are included in the Constitutions and also in various media and audiovisual media laws.



Many national media or press laws are sources of additional protection for the work of journalists and/or to prohibit interference in the activities of broadcasters (for example in Armenia, Moldova, Montenegro, Serbia and Ukraine). Several audiovisual media laws make reference to the role of the NRA in supporting or safeguarding freedom of expression. Several countries have specific laws on freedom of expression (Moldova and Georgia).

There have been several crises that have impacted on freedom of expression including the COVID-19 pandemic, wars, and national political crises.

The main common challenges identified with regard to freedom of expression and freedom of the media in practice concern the safety of journalists, and other interferences with, or restrictions on, the work of journalists.

A further common challenge is the concern regarding the financial situation of the media sector and the issue of sustainability. Experts stressed that such financial pressures present a threat to freedom of expression as these can often lead to reliance on certain types of state funding, and/or to a stronger reliance on business and political interests.

The national experts all referred to the challenges of disinformation, non-professional online media outlets, and the rise of hate speech. Related to both the context of disinformation and to the proliferation of online media outlets not subscribing to professional ethics, is the problem of hate speech, which is on the increase in most of the countries in the study. The search for effective solutions (in terms of self- or co-regulatory approaches) to this problem is ongoing in these countries. While the low quality of journalism of many online news outlets and the rise of disinformation threatens quality journalism alongside social and political stability, efforts to address these issues are frequently seen as threats to freedom of expression in and of themselves.

Regarding the independence of the national regulatory authority (NRA), the results of the study show that most of the provisions under Article 30 covering the principle of independence of the NRA have been well incorporated into the national legislative frameworks in the 11 countries. In this context, it is important to recognise the influence of Council of Europe (CoE) standards, and CoE work in this area.

Despite the presence of relevant provisions in the national laws, there are still several key issues that continue to impede the independence of the NRAs. All experts referred to the issue of ensuring adequate financial and human resources and enforcement powers for NRAs so they may carry out their functions, and have their own budgets. In many cases, the NRAs do not have their own budgets, where the budget is part of the national budget. A lack of sufficient finances, human resources and administrative capacity can impede the possibility for the NRA to enforce the EU acquis. In addition, it can also impact on the potential for the NRA to fulfil duties which require substantial resources such as the monitoring of media coverage during elections. There are some examples where improvements to the legislative framework have been introduced in relation to these issues.

Another issue raised by national experts was the fact that the powers of enforcement are sometimes limited, or implementation or enforcement of the law is dependent on the approval of other bodies. It can also be the case that an NRA has limited options available regarding sanctions in case of violation of regulations. In several cases, these limitations were addressed in draft laws (for example in Montenegro and Serbia).



While there are very detailed procedures in the various legislative frameworks regarding the appointment and dismissal of governing bodies and Directors of NRAs, this does not always guarantee complete political independence. Appointments can often be delayed, sometimes for years, due to the need for agreement between political parties in the parliament. In many countries, a very positive approach involves the role of civil society organisations in the nomination of some of the members of these bodies. There remain, however, ongoing concerns regarding the final election of these bodies by the parliament, whereby many of the members of governing bodies still tend to have strong political affiliations.

Alignment with the rules on the protection of minors is strong in the countries in the study, and the new laws and draft laws, have aligned with the new provisions and the changes to current provisions in the Directive.

In contrast, the promotion of the right of people with disabilities to access audiovisual content has been relatively weak in the majority of countries. Sometimes, only the public service broadcaster has obligations in this area. However, these provisions have now been strengthened in most of the new legislation (AL, BA, GE, MD, MK) and in draft laws (RS, ME, XK). Excellent examples of the proactive work of NRAs can be seen in the development of actions in this area where the NRAs did not previously have a clear remit (or where there were no stronger obligations in the law) to support developments in this field (MK, RS).

The majority of countries have quite strong rules regarding the transparency of media ownership. In particular the requirement to publicly display a range of contact information is already part of the framework in six countries (BA, MD, ME, MK, RS, TN), and this has been added in the new and draft legislation in four others (AL, GE, XK, UA).

Despite this, transparency of media ownership is still not guaranteed regarding traditional broadcasters and media outlets, as it is not always possible to have a real picture of ownership due to the use of off-shore accounts and foreign ownership. A particular problem is the lack of transparency regarding ownership of online media outlets (or news portals). National experts also noted the existence of links between political and business interests and the media (whether traditional or online).

Regarding the promotion of European works, the majority of countries in the study are already aligned with the requirements for linear services (AL, BA, MD, ME, MK, RS). The new obligations for on-demand services have been included in new legislation (Albania, Bosnia and Herzegovina, Georgia, Moldova, North Macedonia, Ukraine) and draft laws reviewed for this mapping (Montenegro, Serbia, Kosovo).

The majority of countries are very well aligned with the AVMS Directive as regards rules on ACCs. Updates to the legislative framework (and draft laws) have included the relevant changes with regard to sponsorship, product placement, and the inclusion of e-cigarettes where tobacco products are mentioned. This also required adjusting the definitions relevant to ACCs that include references to user-generated content and video clips on VSPs. For some countries, this process also requires updating of advertising laws.

Regarding VSPs, nine countries have – to varying degrees – addressed the issue of including VSPs in the national legislative frameworks (BA, UA, MK, MD, AL, GE) and draft



laws (ME, RS, XK). The law in Moldova has not completely addressed issues of ACCs in relation to VSPs, which may be explained by the fact that there is a specific law on advertising that deals with all aspects of ACC. The same applies to the Draft Law in Serbia. Regarding the types of measures to be used, four new laws and two draft laws include reference to all of the measures outlined in the Directive. For the most part, it will be for the VSPs to decide which measures are appropriate to achieve the aim of meeting their obligations. The approach to the implementation of these obligations will be further expanded in several countries via secondary acts or by-laws.



4. National summaries

4.1. Albania (AL)²⁸ (Country report A²⁹)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- The Albanian legislative framework fully transposes the 2010 Audiovisual Media Services (AVMS) Directive (2010/13/EU). The alignment with the AVMS Directive (as amended by the Directive (EU) 2018/1808) is part of the National Plan for European Integration (NPEI) 2022-2024, and was addressed during the first half of 2023. On 19 September 2022, the Albanian Government published a Draft Law on amendments to the “Law on Audio-Visual Media in the Republic of Albania” for consultation. A second revised Draft adding provisions on video-sharing platforms was published in December, with the consultation extended to 22 December 2022. The Draft Law was passed by Parliament on 13 April 2023 and announced by Decree no. 62 dated 4.5.2023, of the President of the Republic of Albania on 4 May 2023.

²⁸ The country report on Albania incorporates the feedback received from Ronelda Rrapollari, General Secretary/Director of Human Resources and Foreign Affairs of the Audiovisual Media Authority (AMA), during the checking round with the national regulatory authorities.

²⁹ Country report A outlines the findings of Questionnaire A in relation to Group I countries, which includes Albania.



- All of the general principles and key values are covered in the current national framework. Certain key principles were strengthened in the revised Law: the obligations in the area of accessibility for people with disabilities; and the obligations regarding transparency of media ownership.
- Regarding video-sharing platforms, a partial incorporation of the provisions of the Directive has been achieved with further detail expected in an additional Regulation of the national regulatory authority, the Audiovisual Media Authority (AMA). The law lacks any reference to the appropriate measures outlined in the Directive, for example.
- The national regulatory authority (NRA) – the Audiovisual Media Authority (AMA) – plays a particularly important role in the promotion of media literacy, media pluralism and media ownership transparency.
- The list³⁰ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.1.1. Introduction

In the context of this research, Albania 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 the Government had to ensure the fulfilment of the conditions set out in the AVMS Directive. The European Commission extended the deadline to 31 May 2023 for completion of alignment with the AVMS Directive. Following the Albanian application for EU membership in 2009, the country was awarded candidate status in 2014.

³⁰ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



4.1.1.1. Relevant framework: current status and developments

The table below outlines the national legislative framework related to the audiovisual media sector, including mainly those acts of most relevance to the issues addressed in this country report. It is important to note that this country report 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 authority (NRA), protection of minors, 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, and thereafter will appear at the first mention of the law in subsequent tables.

Table 19. Legal framework

Title	Status	Relevance	Link
Law No. 8417 dated 22 November 1998 Constitution of the Republic of Albania/1998 (“The Constitution of the Republic of Albania”) <i>Ligji Nr. 8417 datë 22.11.1998 Kushtetuta e Republikës së Shqipërisë/1998 (Albanian)</i>	In force and amended	Regarding fundamental rights	In Albanian: http://qbz.gov.al/eli/ligj/1998/10/21/8417 In English: https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=178&catid=9&m=0
Law No. 97/2013 ‘On audiovisual media in the Republic of Albania’/2013, as amended on 10 March 2016; 27 July 2016; and 22 May 2017 (the “Media Law”) <i>Ligji Nr. 97/2013 ‘Për median audiovizive në Republikën e Shqipërisë’/2013 (Albanian)</i>	In force	Main law that regulates the audiovisual media in Albania	In Albanian: http://qbz.gov.al/eli/ligj/2013/03/04/97-2013 In English (unofficial) ³¹ : https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)007-e

³¹ This unofficial translated version is from the website of the Venice Commission. The dismissed draft amendments of 2019 are marked in red. Numbering of some articles may be different from the official version. Another English translation of this law is available on the website of the Audiovisual Media Authority: <http://ama.gov.al/wp-content/uploads/2021/06/LAW-NO-97-2013-ON-THE-AUDIOVISUAL-MEDIA-AUTHORITY.pdf>.



Title	Status	Relevance	Link
Law/ No. 30/2023 on some Amendments and Additions to Law No 97/2013 "On Audio-Visual Media in the Republic of Albania" as amended <i>Ligjnr. 30/2023 për disa ndryshime dhe shtesa në ligjin nr. 97/2013, "për mediataudiovizive në republikën e shqipërisë", të ndryshuar (Albanian)</i>	In force, May 4 2023	Amendments to the Law intended to align with the AVMS Directive	In Albanian: https://qbz.gov.al/eli/ligj/2023/04/13/30/f051e7ee-ef08-41f8-8b73-253e0947bae6;q=Ligji%20nr%2030%2F2023
Law No. 10221 dated 04 February 2010 "On protection from discrimination" <i>Ligji Nr. 10221 datë 04.02.2010 'Për mbrojtjen nga diskriminimi' (Albanian)</i>	In force and amended	Anti-discrimination law	In Albanian: https://qbz.gov.al/share/cXIYQipYT6arYEGv4luOvO In English: https://www.kmd.al/wp-content/uploads/2021/04/Law-on-Protection-from-Discrimination-Albania.-2020.pdf
Law No. 7895 dated 27 January 1995 'The Criminal Code of the Republic of Albania' (The Criminal Code) <i>Ligji Nr. 7895, datë 27.01.1995 'Kodi Penal i Republikës së Shqipërisë' (Albanian)</i>	In force and amended	Criminal code related to incitement to hatred, incitement to violence, discrimination	In Albanian: https://qbz.gov.al/preview/a2b117e6-69b2-4355-aa4978967c31bf4d In English: https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=11&catid=10&m=0
Law No. 18/2017 "On the rights and protection of children" <i>Ligji Nr. 18/2017 'Për të drejtat dhe mbrojtjen e fëmijës' (Albanian)</i>	In force	Rights of the child	In Albanian https://qbz.gov.al/eli/ligj/2017/02/23/18-2017/a7b5c582-78fa-4109-beca-a0c7b48a2c8c;q=18%2F2017 In English http://observator.org.al/wp-content/uploads/2017/06/Layout-A5-english_18May2017.pdf
Secondary legislation: bylaws, codes etc in force			
The Audiovisual Media Authority (AMA) Decision No. 152 dated 11 October 2019, the Regulation 'On procedures and criteria for the provision of on-demand audio and/or	In force	Rules on on-demand audiovisual media services (AVMS)	In Albanian http://ama.gov.al/wp-content/uploads/2019/10/Vendimi-nr.-152-dt.-11.10.2019-Regulloria-ofrim-sherbimi-sipas-kerkeses.pdf



Title	Status	Relevance	Link
audiovisual media services'/2019 <i>Vendimi Nr. 152 datë 11.10.2019 i Autoritetit të Mediave Audiovizive, Rregullorja 'Mbi Procedurat dhe kriteret për ofrimin e shërbimeve mediatike audio dhe/ose audiovizive sipas kërkesës së përdoruesit'/2019 (Albanian)</i>			
AMA's Regulation 'On Audio and/or audiovisual communications of commercial nature: forms, conditions and the allowed time of the day for their broadcast'/2018 <i>Rregullorja e AMA-s 'Për komunikimet audio dhe/ose audiovizive me natyrë tregtare: format, kushtet dhe koha ditore e lejuar për transmetimin e reklamave'/2018 (Albanian)</i>	In force	Audiovisual commercial communications	In Albanian http://ama.gov.al/wp-content/uploads/2021/02/42-v.-2018.pdf
AMA Studies and Analysis on hate speech dated 14 November 2018 <i>Gjuha e Urrejtjes në Mediat Audiovizive (Albanian)</i>	In force	Monitoring and assessment of hate speech	In Albanian http://ama.gov.al/wp-content/uploads/2019/09/HATE-SPEECH-1.pdf
AMA's Code of Broadcasting for Audiovisual Media, adopted by AMA's Decision No. 228 dated 11 December 2017 <i>Kodi i Transmetimit të AMA-s, adoptuar me vendimin Nr. 228 datë 11.12.2017 të AMA-s/2017 (Albanian)</i>		Broadcasting code	In Albanian http://ama.gov.al/wp-content/uploads/2018/05/Kodi-i-Transmetimit-për-Median-Audiovizive.pdf In English http://ama.gov.al/wp-content/uploads/2021/06/Broadcasting-Code-of-AMA.pdf

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

The main document regulating audiovisual media (the Law on Audiovisual Media in the Republic of Albania- also known as the “Media Law”) was approved in 2013 and amended



three times, twice by law and once via a decision of the Albanian Constitutional Court, on 27 July 2016, regarding media ownership rules. In 2019, there was a further initiative to amend the Media Law, which was initially approved by the Parliament, but was vetoed by the President (by Presidential Decree) and therefore returned for further revisions. The 2019 draft amendments concerned what was called an “anti-defamation package” introduced by the Albanian Government. It would, *inter alia*, extend the competences of the Audiovisual Media Authority (the AMA) and of the Complaints Committee (the CC) of the AMA to online media and give the AMA new administrative powers in this field.

The European Commission for Democracy through Law (Venice Commission) published an Opinion on the amendments in July 2020.³² The Venice Commission acknowledged “the efforts of the Albanian authorities to be transparent, to respond to the criticism and to improve the text of the draft amendments.” However, it considered that the draft amendments were not ready for adoption in their current form, as the law was vague and would likely have a “chilling effect” suppressing free discussion and political speech online. Opinions provided by experts for the OSCE and for the Council of Europe also expressed concern regarding the proposed approach to regulating online news portals, which were the main subjects of the law.³³

The European Commission Report on Albania of 2021 stated that:

Following the unfavourable opinion of the Venice Commission and wide criticism on draft amendments to the media law aimed at regulating online media and some aspects of defamation, representatives from the ruling majority publicly committed to ensure that any new legislation on media would be in line with the Venice Commission recommendations and submitted to consultation with media organisations.³⁴ The government reconsidered the matter and the Assembly did not revert to the issue. The parliament and government resulting from the 25 April elections must uphold the commitment to ensure that any possible changes to the media law would be in line with the Venice Commission Opinion and submitted to proper consultations.

The European Commission Report of 2022 again stressed that:

Any changes to the Media Law need to be in line with the Venice Commission opinion and must be submitted for consultation with media organisations. It remains important to ensure that the media have direct and transparent access to governmental institutions and their activities. The regulatory performance of the Audio-visual Regulatory Authority (AMA)

³² Venice Commission Opinion No. 980/2020 (19.06.2020) <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>.

³³ OSCE (2019): Legal Analysis on the Draft Laws on Changes and Amendments to the Law on Audiovisual Media in the Republic of Albania (Proposal of a Law on Media Services). Prepared by Dr. Joan Barata Mir for the Office of the OSCE Representative on Freedom of the Media- <https://www.osce.org/files/f/documents/4/3/425462.pdf>. JUFREX (2020): Technical Paper: European standards and case law references relevant to the draft amendments to the Law No. 97/2013 “Audiovisual Media in the Republic of Albania” Prepared for the Council of Europe by Ms Mirela Bogdani, Mr Paolo Cavaliere and Ms Deirdre Kevin.

³⁴ EC (2021): Commission Staff Working Document Albania 2021 Report https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en



*needs to be improved and the independence and resources of the public service broadcaster should be strengthened.*³⁵

The transposition of the 2018 AVMS Directive was scheduled in the National Plan for European Integration (NPEI) 2022-2024, with the aim to transpose the Directive by the end of 2022.³⁶ On 12 September 2022, the Albanian Government published a Draft Law No. / 2022 on amendments to the “Law on Audiovisual Media in the Republic of Albania” for consultation (until 15 December 2022). A further revised version of the Draft with some changes was published in December with the consultation period extended to 22 December 2022. The Draft Law was passed by Parliament on 13 April 2023 and announced by Decree no. 62 dated 4.5.2023, of the President of the Republic of Albania on 4 May 2023.

4.1.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant current definitions with the AVMS Directive.

Table 20. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	Yes – aligned with the 2018 AVMSD.	Law on Audiovisual Media in the Republic of Albania (2013), as amended by Law No 30 / 2023 Article 3, paragraph 43
Video-sharing platform service (VSP)	Yes – aligned with the 2018 AVMSD.	New Article 3, paragraph 44/1
Programme	Yes - aligned with the 2018 AVMSD.	Law on Audiovisual Media (2013), as amended 2023 Article 3(26) ‘Television Programme’
User-generated video	Yes – aligned with the 2018 AVMSD.	New Article 3, paragraph 52/1
Editorial decision	Yes – aligned with the 2018 AVMSD.	Law on Audiovisual Media (2013), as amended 2023 New Article 3, paragraph 50/1
Editorial responsibility	Yes - aligned with the 2018 AVMSD.	As above, Article 3(22)
Media service provider	Yes - aligned with the 2018 AVMSD.	As above, Article 3(17)
VSP provider	Yes – aligned with the 2018 AVMSD.	New Article 3, paragraph 17/1

³⁵ EC (2022): Commission Staff Working Document Albania 2022 Report <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

³⁶ Business meeting between regional regulators for the EU Directive and the 700 MHz Frequency Band (31/03/2022): <http://ama.gov.al/business-meeting-between-regional-regulators-for-the-eu-directive-and-the-700-mhz-frequency-band/?lang=en>



Definitions (Article 1 AVMSD)	In line with AVMSD	References
Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD.	As above, Article 3(50)
Broadcaster	No	
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD.	As above, Article 3(42)
Audiovisual commercial communication (ACC)	Yes – aligned with the 2018 AVMSD.	Law on Audiovisual Media (2013), as amended 2023 Article 3(8)
Television advertising	Yes – aligned with the 2018 AVMSD.	As above, Article 3(35)
Surreptitious ACC	Yes – aligned with the 2018 AVMSD.	As above, Article 3(7)
Sponsorship	Yes – aligned with the 2018 AVMSD in the Law, with reference to user-generated video and VSPs	Law on Audiovisual Media (2013), as amended 2023 Article 3(37)
Teleshopping	Yes – aligned with the 2018 AVMSD	As above, Article 3(45)
Product placement	Yes – aligned with the 2018 AVMSD in the Law, with reference to user-generated video and VSPs	Law on Audiovisual Media (2013), as amended 2023 Article 3(51)
European works	Yes – aligned with the 2018 AVMSD	As above, Article 3(52)
Independent producer	The definition of independent producer is not standard – it does cover cross ownership between independent producers and broadcasters.	As above, Article 3(24)
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	The Albanian civil and criminal legislation mention the right to the protection of people’s integrity and dignity, but they do not provide definitions of these terms.	
Definition of incitement to hatred (or equivalent)	Yes – the Criminal Code provides a definition: It includes inciting hate or disputes on the grounds of race, ethnicity, religion or sexual orientation, as well as intentional preparation, dissemination or preservation for purposes of distributing writings with such content, by any means or forms. It provides for punishment of from two to ten years of imprisonment. *** The AMA “Guide on Hate Speech” provides several definitions concerning hate speech, including from the Council of Europe Committee of Ministers’ Recommendation on Hate Speech. ³⁷	The Criminal Code, 1995 Article 265 *** AMA Guide on hate speech dated 14 November 2018, page 30 *** Law on Audiovisual Media (2013), as amended 2023 Article 32(4)

³⁷ The Council of Europe Committee of Ministers’ Recommendation on Hate Speech establishes that: “the term hate speech should be understood as a summary of all forms of expression that disseminate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred, based on intolerance, including: intolerance expressed by aggressive nationalism or ethnocentrism, discrimination and hostility against minorities, migrants and people of migrant origin”.



Definitions (Article 1 AVMSD)	In line with AVMSD	References
	Hate speech includes all forms of expression that disseminate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred, based on intolerance. *** The Law on Audiovisual media includes a prohibition on hate speech in audiovisual media services (Article 32/4).	

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

From the table above, it is clear that the relevant definitions are now in line with the 2018 AVMS Directive following the amendments to the Law on Audiovisual Media passed by Parliament 13 April 2023.

The AMA Magazine No. 7 of 2020³⁸ discussed VSPs, and summarised the provisions of the amendments to the AVMS Directive but did not provide definitions. The AMA also noted that the Media Law is in line with the 2010 AVMS Directive, but needs to be updated to align with the 2018 AVMS Directive. As outlined above, a new Draft Law was published for consultation (September 2022) in order to align with the Directive. This was followed by an updated Draft Law in December 2022, that included some of the relevant provisions on VSPs, and was passed by Parliament in April 2023. The Criminal Code of the Republic of Albania and the AMA Guide on Hate Speech are important sources of prohibition regarding incitement to hatred.

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

The national legislative framework, as can be seen below, aligns with the 2010 AVMS Directive in relation to the establishment of jurisdiction.

Table 21. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of audiovisual media service providers	Yes – closely aligned with the 2018 AVMSD.	Law on Audiovisual Media (2013), as amended 2023 Article 30
Article 2 (5a). Requirement that AVMS providers inform the competent national regulatory authorities or bodies about	Yes – aligned with the 2018 AVMSD.	As above, Article 30 (8)

³⁸ AMA's Magazine No. 7 of 2020: <http://ama.gov.al/wp-content/uploads/2020/07/Reviste-AMA-Nr.7.pdf> (page 25).



any changes that may affect the determination of jurisdiction		
Article 2 (5b). Requirement to maintain up to date list of the AVMS providers under national jurisdiction	Yes – aligned with the 2018 AVMSD.	As above, Article 30 (9)
Article 28a (paragraphs 1-5) Regarding the establishment of the jurisdiction of VSPs	Yes – closely aligned with the 2018 AVMSD.	As above, new Article 30/ 1
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 – aligned with the 2018 AVMSD.	As above, new Article 30/ 1 (5)
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing opinion on jurisdiction	Article 19 (2d) makes a general reference to the cooperation of the AMA within the ERGA (as observer)	As above, new Article 19 (2d)

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

The recent amendments to the Law No 97/2013 "On Audio-Visual Media in the Republic of Albania" include the requirement to inform the NRA regarding any changes related to jurisdiction and the requirement for the state to maintain an up-to-date list of audiovisual media services under its jurisdiction. The AMA currently maintains public lists of national or local audiovisual media service providers operating in Albania. The law does not mention the specific provision where there is disagreement regarding jurisdiction and respective roles of the European Commission and the European Regulators Group for Audiovisual Media Services (ERGA). Currently, Albania has Observer status only at ERGA, and a general reference is made to cooperation within the ERGA under the Law.

The latest amendments to the Law also include the provisions on the jurisdiction of VSPs. These provisions are slightly minimal as they do not include the case (Article 28a (4) where: there may be several subsidiary undertakings established in Albania and in a different Member State of the European Union, and whereby jurisdiction is based on the state where one of the subsidiary undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that country.

The principle of freedom of reception and retransmission for audiovisual media services are examined below.

Table 22. 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 - aligned with the 2010 AVMSD The law establishes the principle of freedom of reception and retransmission in its Article 5, ensuring the freedom of reception and retransmission from the member states of the European Union and from third European countries, parties	Law on Audiovisual Media (2013), as amended 2023 Article 5



	to the European Convention on Transfrontier Television (ECTT).	
Article 3(2) - derogations from the principle of freedom of reception and transmission	Not precisely aligned – no specific details on derogations from the principle of freedom of reception and retransmission. It provides that “...in special cases, [Albania] may restrict the freedom to broadcast these services only on the basis of [the ECTT] or this law.”	As above, Article 5

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

The principle of freedom of reception and re-transmission is enshrined in the law. However, there are no details with regard to a system of derogations. While most of the grounds for derogation outlined in the AVMS Directive (protection of minors, incitement to violence or hatred) are included in the provisions of the Albanian law, they are not clearly identified in the context of grounds for derogation. Hence this aspect of the law would also require amendment to become aligned with the AVMS Directive.

4.1.2. 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 23. 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>The Media Law prohibits the broadcasting of programmes with content that incites hate on grounds of race, gender, religion, ethnic, national, and any other form of discrimination. ***</p> <p>Albania has a specific law “On protection from discrimination”, which regulates the implementation of, and compliance with, the principle of equality and non-discrimination (in relation to a broad range of grounds and personal characteristics) (Article 1).</p>	<p>Constitution of the Republic of Albania (1998) Article 18 ***</p> <p>Law on Audiovisual Media (2013), as amended 2023 Article 32(4) ***</p> <p>Law No. 10221 dated 04 February 2010 “On protection from discrimination” Article 1, and Article 8</p>



General principle/ key value	Relevant provision/ provisions	References
	<p>Under Article 8, the law specifically prohibits the publication of various advertisements and announcements if they present, openly or in an implied manner, a purpose to discriminate for the causes mentioned in Article 1 of this law.</p>	
<p>Prohibition of incitement to hatred and incitement to violence</p>	<p>Yes - AVMS providers should be guided by principles including the prohibition of broadcasting that incites or justifies violence. Article 4(2) (dh). A new Article 4 (1) (dh) was introduced that AVMS providers should guarantee the principles of gender equality and non-discrimination, prohibition of sexism in the media and gender representation in the audiovisual media, in accordance with the legislation in force. Also, AVMS providers cannot broadcast content that incites hatred on any grounds, or any other form of discrimination (Article 34(2)). Article 76(1) includes the same rule for on-demand services. *** The Albanian Criminal Code criminalises the incitement to hatred (on grounds of affiliation or personal characteristics). It also criminalises the preparation, dissemination, distribution of such content (Article 265). Endangering public peace by calling for national hatred against sections of the population, via insult, defamation or calls for use of violence against them is also a criminal act (Article 266). Inciting other people to retaliation or blood revenge is also a criminal act (Article 83/b). *** The Draft Law prohibits under Article 32 (4) audiovisual media services and video-sharing platforms from transmitting content that a) incite violence or hatred against a group of persons or a member of a group on the basis of: sex, race, colour, ethnicity or social origin, genetic characteristics, language, religion, belief, political opinion, nationality, membership of a national minority, property, birth,</p>	<p>Law on Audiovisual Media (2013), as amended 2023 Articles 4 (1) (dh), 4(2) (dh), 32(4), 76(1) *** Criminal Code (1995) Articles 265, 266, Article 83/b *** Law on Audiovisual Media (2013), as amended 2023 Article 32 (4)</p>



General principle/ key value	Relevant provision/ provisions	References
	disability, age or sexual orientation, as well as any other form of discrimination according to the legislation in force for protection against discrimination.	
Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism	<p>The Law on Audiovisual Media prohibits the broadcast of content that incites terrorist acts under 32 (4b).</p> <p>The new article 32/ 1 (4c) prohibits this content on VSPs - provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism</p> <p>***</p> <p>The Criminal Code deals with terrorism, whereby incitement, public call, distribution of writing or propaganda, with the aim of supporting or committing terrorist acts are punishable by imprisonment for four to ten years (Article 117).</p> <p>Child pornography, including its production, distribution, broadcasting, use, or possession is punishable by three to ten years of imprisonment (Article 117).</p> <p>Under the Criminal Code, publicly disseminating content via computer systems with racist or xenophobic content is a criminal misdemeanour (Article 119/a).</p> <p>Public insult via a computer system, of a person for reasons of race, ethnicity etc., is punishable by a fine or imprisonment of up to two years (Article 119/b).</p>	<p>Law on Audiovisual Media (2013), as amended 2023 Article 32(4b) Article 32/ 1 (4c)</p> <p>***</p> <p>Criminal Code (1995) Articles 117, 119/a, 119/b</p>

Source: Response of national expert of Albania 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 well enshrined in the legislative framework. The amendments to the Law on Audiovisual media included the prohibition for audiovisual media service providers to transmit content that incites violence or hatred, or that encourages terrorist acts, or constitutes other criminal content.



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

The table below indicates the relevant legal framework for the protection of the freedom of expression, which is enshrined in the Constitution of the Republic of Albania, included in the Media Law, and also protected in the Criminal Code.

Table 24. Freedom of expression

General principle/ key value	Relevant provision/ provisions	References
Freedom of expression/ freedom of the media/ prevention of censorship/ right to information	Article 22 of the Constitution of the Republic of Albania guarantees the protection of the freedom of expression and the freedom of the media. It prohibits prior censorship. The law may require authorisation to be granted for the operation of radio or television stations. Article 23 regulates the right to access to information.	Constitution of the Republic of Albania, 1998 Articles 22 and 23
Freedom of expression/ freedom of the media	According to the Media Law, AVMS providers are guided, <i>inter alia</i> , by the principle of guaranteeing the freedom of expression [Article 4(2)(a)] The NRA (the AMA) should make sure that it safeguards and supports the democratic values established in the Constitution, especially the freedom of expression and of media (Article 18(1)(b)). The same provision is repeated throughout this law when regulating the process of authorisation of audio and audiovisual programmes (Article 64), and the licensing of audiovisual programmes (Article 67)	Law on Audiovisual Media (2013), as amended 2023 Articles 4(2)(a), 18(1)(b), 64, 67
Freedom of expression	Impeding citizens from exercising their right to freedom of expression is a criminal act under the Criminal Code (Article 261)	Criminal Code, 1995 Article 261

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

In summary, the principle of freedom of expression is enshrined in the legislative framework in Albania – indeed impeding citizens from exercising their right to freedom of expression is a criminal act under the Criminal Code. Regarding obstacles to the protection of freedom of expression or freedom of media, recent reports on the situation in Albania have highlighted some issues of concern.

Both the 2021 and 2022 European Commission Reports on Albania³⁹ assessed that Albania is moderately prepared in the area of freedom of expression. According to the

³⁹ EC (2021): Commission Staff Working Document Albania 2021 Report page 29.

EC (2022): Commission Staff Working Document Albania 2022 Report.



reports, the strong influence of politics and business over the media remains a key source of concern for freedom of expression in the country.

The US Department of State Human Rights Reports on Albania from 2020 and 2021⁴⁰ both concluded that the independent media were active and expressed a wide variety of views. However, they noted that there were efforts to exert direct and indirect political and economic pressure on the media, including by threats and violence against journalists who tried to investigate crime and corruption.

In its 2020 report on Internet governance in Albania and its role in Media Freedom⁴¹, the Balkan Investigative Reporting Network (BIRN), argued that the decrease [of media freedom in Albania at that time] can be attributed, among other trends, to the government's efforts to pass legislation that would empower an administrative body to censor the content of online media through draconian fines. This issue was resolved with the rejection of the proposed amendments (as discussed above in section 4.1). The report also emphasised increased defamation lawsuits towards journalists and media outlets, an increase in physical and verbal threats to journalists by people vested with political power and authority, increased self-censorship and smear campaigns, the lack of transparency of public institutions, and a high concentration of ownership in the media and advertising market.

In relation to online regulation and the potential for undermining freedom of expression, Albania represents a key example in this area. The proposed amendments in 2019 aimed to regulate online news portals, their comments sections and claims of insult and defamation. As discussed earlier, the 2019 draft amendments were not adopted. Local and international media organisations considered the draft law to be a tool of censorship.⁴²

The OSCE legal analysis of 2019⁴³ on the draft laws on changes and amendments to the law on audiovisual media in the Republic of Albania argued that, considering the size and characteristics of the electronic publications service providers who may become subject to the new legal provisions, the amount of the fines would be clearly excessive for almost all Albanian service providers. Therefore, these fines could in fact be seen as an indirect way to force the closure or create serious survival problems to such operators. It was therefore recommended that provisions on sanctions for administrative contraventions should include additional criteria in order to properly protect the principles of

⁴⁰ US Department of State 2020 Human Rights Report on Albania: <https://al.usembassy.gov/wp-content/uploads/sites/140/ALBANIA-2020-HUMAN-RIGHTS-REPORT.pdf>, page 9.

US Department of State 2021 Human Rights Report on Albania: https://www.state.gov/wp-content/uploads/2022/02/313615_ALBANIA-2021-HUMAN-RIGHTS-REPORT.pdf, page 11.

⁴¹ BIRN (2020): Internet Governance in Albania and its Role in Media Freedom: <https://birn.eu.com/wp-content/uploads/2020/08/Internet-Governance-1.pdf>, page 21.

⁴² Balkan Insight, 2019: Albania approves controversial Media Laws amidst protests: <https://balkaninsight.com/2019/12/18/albania-approves-controversial-media-laws-amidst-protests/>.

⁴³ OSCE (2019) Legal Analysis on the Draft Laws on Changes and Amendments to the Law on Audiovisual Media in the Republic of Albania (Proposal of a Law on Media Services) prepared by Dr. Joan Barata Mir for the Office of the OSCE Representative on Freedom of the Media: <https://www.osce.org/files/f/documents/4/3/425462.pdf>, page 17.



proportionality and necessity, as well as to guarantee that any sanction is adopted after proper consideration of the size and economic capacity of the media outlet in question.

The 2021 Monitoring Report of Media Freedom Rapid Response⁴⁴ claimed that the independence of the system for media regulation [in Albania] was threatened, while the establishment of a new government agency which would centralise control over public relations and government information raised further worries about the access of the media to information. This discussion is related to the establishment of the new Media and Information Agency.⁴⁵

Regarding this issue, the European Commission Report on Albania 2022 emphasised that:

It remains important to ensure direct and transparent media access to governmental institutions and their activities and to factual non-partisan public information. Some media organisations have encountered difficulties in accessing factual government information and have expressed concerns about the common practice of the authorities and political parties of providing pre-prepared written or audio-visual content. This notably stems from the need for all government public relations to be handled by the newly created Media and Information Agency.

It also noted that legislation on the Right to Information is being updated. Although defamation remains a criminal offence according to Article 120 of the Albanian Criminal Code, a positive development is that most of the recent case-law on alleged defamation have been civil damage compensation cases before the Albanian Civil Chambers of the Courts.

According to the 2022 Monitoring Report of Media Freedom Rapid Response, “overall, the environment for independent and watchdog journalism or media journalism remains challenging”.

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

The NRA is the Audiovisual Media Authority (AMA). Its remit includes the authorising and licensing of operators, their supervision, managing the radio frequency spectrum, and monitoring and reporting on audiovisual media content.

The AMA develops regulations and codes, and strategic plans for the development of the audiovisual sector. The AMA is also responsible for implementing the media ownership provisions related to audiovisual media in the media law.

⁴⁴ 2021 Monitoring Report of Media Freedom Rapid Response:
https://www.mapmf.org/uploads/MFRR-Monitoring-Report_2021.pdf, page 19.

⁴⁵ Established by the Decision of the Council of Ministers (DCM) No. 512 dated 18.09.2021, “On the creation, organisation and functioning of the Media and Information Agency”:
<https://qbz.gov.al/eli/vendim/2021/09/18/512/f0d0e454-5caf-48ab-9a96-1d9f43293eba;q=vkm%20media>.



Table 25. Independence of National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government	Yes – aligned with the 2018 AVMSD The Media Law stipulates under Article 6 that the AMA is a legal person, independent, with head office in Tirana.	Law on Audiovisual Media (2013), as amended 2023 Article 6
NRAs should exercise their powers impartially and transparently	Yes - aligned with the 2018 AVMSD Article 7 outlines a range of links (professional, political, family) which disqualify individuals from being members of the AMA. AMA members should declare: any interest or potential interest or connection with any subject licensed by the AMA, or likely to be licensed by the AMA. Where such an interest exists, they cannot take part in the discussion or decision-making of issues related to these interests. In addition, the AMA members must not be financially or politically influenced and must always act to accomplish or deepen the objective of the AMA. The Media Law stresses in several places that the AMA shall be led by the principle of transparency in its decision-making (Article 25, Article 54, Article 139, etc.).	As above, Article 7 Article 25, 54, 139
Clear definition of the competences and powers of the NRAs outlined in the law	Yes - aligned with the 2018 AVMSD Article 19 of the Media Law includes a long and detailed list of the main functions of AMA.	As above, Article 19
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets	Yes – aligned with the 2018 AVMSD Article 24 outlines the financing resources, which are a mixture of licence, authorisation and administrative fees, and financing from the state budget (only when necessary for performing its functions, or special additional functions). There are no specific provisions ensuring financial and human resources are adequate to carry out the functions. Article 19(16) of the Media Law provides that AMA issues decisions on the implementation of its functions and this law. Furthermore, Article 23 outlines the enforcement powers of the AMA.	As above, Article 24 Article 19(16) Article 23
Clear conditions and (transparent and non-discriminatory) procedures for the appointment and	Yes - aligned with the 2018 AVMSD The Media Law regulates the appointment (Article 10) and the dismissal (Article 12) of the head of the AMA. The candidates for the head of AMA have to fulfil specific conditions related to conflict of	As above, Articles 7, 8, 9, 10, 12



AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
dismissal of the heads of NRAs/members of governing bodies laid out in the law	interest or other incompatibilities (Article 7) and should fulfil the criteria specified in the law regarding professional experience (Article 8) . The members of AMA are appointed by the Parliament for a five-year term, with the right of renewal only once. A range of organisations and civil society (NGOs) organisations (specified in Article 9) can propose candidates. A Parliamentary Committee proposes a final list of candidates. They are required to keep a political balance: three candidates supported by the majority in the Parliament and three supported by the opposition. The dismissal of the head or other members of the AMA is detailed in Article 12. The latter provides the cases where they can be dismissed: criminal conviction; long term illness; failure to perform duties; infringement of conflict of interest declaration; or when they do not have legal ability to act, or when they resign.	
Existence of effective and independent appeal mechanisms	Yes – aligned with the 2018 AVMSD Appeals regarding decisions are dealt with by the AMA Board. AMA decisions can also be appealed in Tirana First Instance Court.	As above, Article 20.
Provisions in the law that support cooperation between NRAs	Yes – aligned with the 2018 AVMSD Article 19(2)(d) supports the AMA in cooperating with similar authorities of other states. Also, the AMA will participate in international activities, related to the strategy and perspectives of development of audiovisual media, represent the Republic of Albania, and support the participation and cooperation of public and private entities with European and global organisations in the field of audiovisual media.	As above, Article 19 (2)(d) Article 19 (10)

Source: Response of national expert of Albania 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.⁴⁶

However, the independence of the AMA – in particular with regard to the appointment of the Head of the AMA and also the Board members - was a topic of discussion

⁴⁶ See also on this issue, the Opinion of the European Commission for Democracy through Law (Venice Commission) on Albania, of 19 June 2020, <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>.



for national and international organisations during the appointment of the new AMA head in July 2021. The concerns appear to be based (among others) on the out-going government pushing to appoint the new head before the elections. The EU Commission 2021 Report on Albania⁴⁷ stated that

Local and international media organisations and opposition have raised concerns over the appointment process as well as regarding the political impartiality of the newly elected head of the regulatory body. The new Parliament needs to fill these vacancies and make AMA fully operational. In doing so, it is important that the new appointments ensure the independence and legitimacy of the regulatory authority.

However, despite the recommendations made by the EU Delegation in Tirana to submit the appointment of the chair to the vote of the new Parliament in September 2021 and achieve the widest possible consensus and legitimacy,⁴⁸ the head of AMA was appointed by the Albanian Parliament in July 2021, on the last session of that legislature.

In the European Commission Report on Albania of 2022, the report noted that:

In February 2022, Parliament filled six vacancies out of the seven members of the audio-visual regulatory authority, thus making the authority fully operational. The independence of some AMA members has been questioned due to their political links.

The Venice Commission Opinion of 2020 emphasised that with regard to both the AMA and the Complaints Council:

It is necessary to ensure that those bodies have a pluralistic composition, enjoy sufficient independence from the political parties and big businesses, follow appropriate procedures and are professionally apt to perform new duties.⁴⁹

The Opinion also made several key points with regard to the independence of the AMA (summarised below):

- Including representatives on the Media Council of the media community and the civil society who are not directly affiliated with main political forces could be one step to enhancing independence and alleviating distrust;
- Clear eligibility criteria as regards the skills and experience needed for members of the Complaints Committee should be applied;
- The composition of the AMA and the Complaints Committee, which is selected by the AMA on the basis of the rules developed by the AMA, may raise legitimate concerns regarding the independence of those two bodies.

⁴⁷ EU Commission 2021 Report on Albania: https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en.

⁴⁸ Statement of the EU Delegation in Tirana: <https://twitter.com/EUinAlbania/status/1412667501536759808>.

⁴⁹ Opinion of the European Commission for Democracy through Law (Venice Commission) on Albania, of 19 June 2020, <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>.



4.1.2.3. 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.

Table 26. 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 2018 AVMSD</p> <p>Article 32/1(1) requires audiovisual media service to protect minors from pornographic programmes via limited access devices and parental control.</p> <p>Content which can seriously impair the physical, mental or moral development of minors, should be transmitted in encrypted form to ensure it cannot be accessed by minors. Articles 32/1(1) and 76(4)</p> <p>***</p> <p>The specific law “On the rights and protection of children” in Article 17(7) re-emphasises that audiovisual broadcasters are responsible in the cases of the infringement of the rights of children during the broadcast of their programmes, in accordance with this law, as well as legislation in force for audiovisual media.</p> <p>***</p> <p>Under the Code of Broadcasting</p> <p>AVMS providers are not allowed to broadcast programs that could seriously impair the physical, mental, or moral development of children, in particular pornography or extreme and artificial violence (Article 5.30). The Code also requires audiovisual media service providers to schedule content appropriately and respect the watershed rules (the time limit is 22.00 - 06.00) (Article 5.34), and to include warning signs during the period 19.00 to 22.00, for programmes that can harm children (Article 5.44).</p>	<p>Law on Audiovisual Media (2013), as amended 2023 Article 32/1(1) Article 76 (4)</p> <p>***</p> <p>Law No. 18/2017 “On the rights and protection of children” Article 17 (7)</p> <p>***</p> <p>AMA’s Code of Broadcasting for Audiovisual Media, adopted by AMA’s Decision No. 228 dated 11 December 2017 Articles 5.30, 5.34, 5.44</p>



AVMSD and the protection of minors	In line with AVMSD	References
Prohibition of commercial use of personal data of minors collected when implementing these measures	Yes - aligned with the 2018 AVMSD in Law.	Law on Audiovisual Media (2013), as amended 2023 Article 32/1(2)
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	Yes – aligned with the 2018 AVMSD AVMS providers shall provide sufficient information on content that may harm the physical, mental or moral development of children. Such programmes must be preceded by an acoustic warning or identified by the presence of a visual symbol throughout their duration. ***	Law on Audiovisual Media (2013), as amended 2023 Article 32/1(3) Article 46(2)(dh) *** Code of Broadcasting, Article 5.44
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	Yes – aligned with the 2018 AVMSD The law prohibits all forms of ACCs for cigarettes and other tobacco-related products, including e-cigarettes and refills (Article 42 (4)). There are also rules regarding ACCs for alcoholic beverages, which should not be directed at children or minors (Article 42(5)). Article 43(7)(a) establishes that advertising and teleshopping on alcoholic beverages should not be addressed to minors, neither can it display minors consuming such beverages. Article 42 (8) states that the AMA shall draft and review Codes of Conduct that define standards and practices concerning inappropriate commercial communications for alcoholic beverages and in relation to inappropriate commercial communications that accompany or are included in children's programmes, for HFSS foods. *** The Code prohibits advertisements that depict children, or adults in the presence of children consuming alcohol, tobacco or other harmful substances (Article 5.26). Electronic cigarettes and refills not included.	Law on Audiovisual Media (2013), as amended 2023 Articles 42(4), 42(5), 42 (8), 43(7)(a) *** Code of Broadcasting, Article 5.26
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – aligned with the 2018 AVMSD	Law on Audiovisual Media (2013), as amended 2023 Article 42 (7)
Effectively reduce the exposure of children to ACCs for such foods and beverages	Yes – aligned with the 2018 AVMSD Article 42 (8) states that the AMA shall draft and review Codes of Conduct that define standards and practices concerning inappropriate commercial	As above, Article 42(8). ***



AVMSD and the protection of minors	In line with AVMSD	References
containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	communications for alcoholic beverages and in relation to inappropriate commercial communications that accompany or are included in children's programmes, for HFSS foods. *** The Code of Broadcasting also prohibits ACCs for HFSS in children's programmes.	Code of Broadcasting, Article 5.22
Prohibiting of product placement in children's programmes	Yes - aligned with the 2018 AVMSD	Media Law (2013) Article 44(1) and (2)

Source: Response of national expert of Albania 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 Code of Broadcasting is an important policy in this area, and it also reflects the principles and standards established in the European Convention on Human Rights, United Nations' Convention on the Protection of Children's Rights as well as the core principles laid down in the AVMS Directive, and in the national law "On the rights and the protection of children". The amended Law ensured the addition of provisions regarding new products (e-cigarettes) and the requirement to protect children's data. In other respects, the provisions regarding high fat sugar and salt (HFSS) foods are relatively strong.

The NRA recently organised a conference "On protection of children in audiovisual media" calling for a regular and strict monitoring of the implementation of the provisions deriving from the Code of Broadcasting and strengthening of penalties for audiovisual media service providers that violate the provisions of this code as regards child protection.⁵⁰

Most of the press reports in Albania regarding the protection of minors in the media are concerned with the failure of audiovisual media service providers to anonymise the identity of minors when reporting cases of physical and/or sexual violence against minors.⁵¹ A growing concern remains children's access to the Internet, with very little regulation regarding the protection of minors. The EU Commission's 2021 Report on Albania addresses this issue, stating that "increasing evidence of risks of abuse and exploitation due to the use of the internet by children is of serious concern. One in 10 children reported at least one unwanted sexual experience through the internet".⁵² The dangers of social media for minors and youth are also frequent topics in the Albanian press.⁵³ The EC recommended in its 2022 report that the development of a Strategy on better internet for kids aimed, among

⁵⁰ AMA: <https://ama.gov.al/mbrojttja-e-femijeve-ne-mediat-audiovizive-ama-konference-nderkombetare-ne-tirane/>.

⁵¹ <https://www.medialook.al/3523/>.

⁵² EC (2021): Commission Staff Working Document Albania 2021 Report https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en, page 33.

⁵³ In the Gazeta Express: <https://www.gazetaexpress.com/edukimi-mediatik-i-domosdoshem-per-dilemat-sociale/>.



others, at facilitating a child-led process, as well as detecting and retorting child sexual abuse material online should be considered.⁵⁴

Regarding Media and Information Literacy (MIL), in 2019, the Albanian Institute of Media in collaboration with the AMA organised a Conference on “Children and Media Literacy”.⁵⁵ Key topics included children's rights and media education, international standards and practices with a focus on European standards and practices, and the issue of reporting on children in Albanian media, etc. The AMA also organised a workshop in 2020 entitled “Minors and Media Education Habits”⁵⁶ focusing on representation of children in the media, and the issue of social media platforms and bullying. A conclusion of the discussions was that MIL is to become part of the teacher training programmes in Albania. The recently amended Law on Audiovisual Media added a definition of “media literacy” and adds to the AMA Functions (Article 19), to promote and encourage public awareness, research and activities related to media literacy.

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

The 2018 AVMS Directive strengthens the obligations for audiovisual media services 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”. The table below examines the legislative framework in Albania.

Table 27. 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	<p>Yes - aligned with the 2018 AVMSD</p> <p>A new Article 32/2 (1) requires the continuous and progressive provision of accessible content.</p> <p>The AMA can approve a regulation on special measures the broadcasters should undertake in programmes to guarantee the proper access for people with disabilities (Article 47(1)(c)). The public service broadcaster is obliged to provide as much accessibility as possible (Article 118(2)(a)).</p> <p>***</p> <p>The current Code of Broadcasting covers this issue but focuses on the representation of people with disabilities in broadcasting, and on raising awareness in the society and in various institutions concerning the responsibility towards persons with disabilities.</p>	<p>Law on Audiovisual Media (2013), as amended 2023</p> <p>Article 32/2 (1)</p> <p>Article 47(1)(c)</p> <p>Article 118(2)(a)</p> <p>***</p> <p>AMA's Code of Broadcasting for Audiovisual Media, adopted by AMA's Decision No. 228 dated 11 December 2017</p> <p>Section 6</p>

⁵⁴ <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

⁵⁵ Children and Media Literacy conference: <http://ama.gov.al/6667/>.

⁵⁶ Minors and Media Education Habits: <http://ama.gov.al/tryeza-e-diskutimit-femijet-dhe-shprehite-e-edukimit-mediatik/>.



AVMSD and accessibility of audiovisual media services	In line with AVMSD	References
	The only obligation is that national audiovisual media service providers are obliged to use sign language in at least one of the news editions.	
AVMS 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 AVMS providers must draft action plans, and must periodically inform the AMA about measures taken.	Law on Audiovisual Media (2013), as amended 2023 Article 32/2 (2) Article 32/2 (3)
States should provide a public online point of contact for providing information and receiving complaints	Yes - aligned with the 2018 AVMSD AMA shall designate a contact point in its official website, easily accessible by persons with disabilities, for the provision of information and the receipt of complaints relating to the matters referred to in this article	As above, Article 32/2 (4)
Emergency information should be in accessible formats	Yes - aligned with the 2018 AVMSD	As above, Article 32/2 (5)

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

The Albanian legislative framework, following the passing of amendments by Parliament to the Law on Audiovisual media (2013) in April 2023 is now aligned with the 2018 AVMS Directive regarding the provision of accessible content for people with disabilities. The Strategic Action Plan for 2021-2023 of the regulator indicates the intention to continue intensive communication with audiovisual media service providers that have a legal obligation to broadcast in sign language and the intention to find legal mechanisms for the operators to fulfil this obligation.⁵⁷

4.1.2.5. 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 AVMS Directive requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The table below looks at the legislative framework in Albania regarding these provisions. As noted above, the AMA is also responsible for implementing the media ownership provisions in the media law, which is achieved mainly via the licensing system.

⁵⁷ Strategic Action-Plan for 2021-2023:
http://ama.gov.al/wp-content/uploads/2020/11/AMA_STRATEGJIA_20212023.pdf.

**Table 28. Transparency of media ownership**

AVMSD and transparency of media ownership	In line with AVMSD	Reference
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 Article 32 (1) now includes the requirements that the data of the media service provider be public, including the e-mail or website, enabling to be contacted quickly and directly, and include the authority that supervises its activity.	Law on Audiovisual Media (2013), as amended 2023 Article 32 (1 c and ç)
Possibility to also require AVMS providers to make accessible information on their ownership structures	Yes - aligned with the 2018 AVMSD Article 32 (1/1) requires that audiovisual media services providers must publish information about their ownership structure, including the beneficiary owners, according to the provisions of the applicable legislation. *** In addition, the requirements of business registration ensures that most media outlets are in the public Albanian Business Register and this includes details about the ownership of media shareholders.	Law on Audiovisual Media (2013), as amended 2023 Article 32 (1/1) *** Law No. 9723 dated 03 May 2007 on business registration Article 61
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	Yes - aligned with the 2018 AVMSD	Law on Audiovisual Media (2013), as amended 2023 Article 30 (9)

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

According to the Opinion from the Venice Commission on the 2019 draft amendments to the Albanian Media Law⁵⁸ while there are around 700 online media outlets in 2019 in Albania, only approximately 45 were identified with known owners, while the others were anonymous. The same report points to a lack of transparency on media ownership and funding sources, especially since the ownership restrictions for national broadcast media were lifted in 2016.⁵⁹ Both the 2021 and 2022 European Commission Reports on Albania⁶⁰ concluded that: “Albania should ensure that the legal requirements for transparency of media ownership and financing, and its limitations thereto, as well as requirements on public advertising, are aligned to international standards.”

The Media Ownership Monitor in Albania has estimated that there is a medium risk of hindering media ownership transparency in Albania, mostly due to the lack of specific and dedicated regulation in the national legal framework for the disclosure of media

⁵⁸ Venice Commission’s Opinion of 2019 Draft Amendments to Law No. 97/2013 On the Audiovisual Media Service: <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>, page 6.

⁵⁹ Ibid.

⁶⁰ 2021 European Commission Report on Albania https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en, page 29. Also the 2022 report page 30: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>.



ownership information, the difficulty of obtaining data on ownership of online media.⁶¹ In this regard, the Venice Commission Opinion also noted that:

During the exchanges with the rapporteurs, the opponents of the draft amendments (some MPs and media organisations) described media ownership in Albania as a „family affair“ and the market as concentrated in the hands of a few powerful families, especially since the ownership restrictions for national broadcast media were lifted in 2016.⁶²

Following the passing of amendments by Parliament to the Law on Audiovisual media (2013) in April 2023, the provisions regarding transparency of media ownership have been introduced as outlined in the table above.

With regard to the provisions in the Media Law regarding ownership,⁶³ the Association of Albanian Electronic Media managed to repeal some of the key media ownership rules at the Constitutional Court. This was, in particular, Article 62(3) of the law which limited individual control – no natural or legal, local or foreign person could hold more than 40% of the general capital of a joint stock company that holds a national radio or television licence. The Constitutional Court, in its decision No. 56 dated 27 July 2016, decided that Article 62(3) of the Media Law was unconstitutional and repealed it, arguing that “the means selected by the legislator to limit the ownership shares of companies operating in the field of media has no reasonable and proportionate relationship with the legislator’s legitimate intention for the diversity of information”.⁶⁴

The implementation of media pluralism (media ownership rules) under Article 62 of the Media Law, is the responsibility of the AMA. In its Strategic Action Plan for 2021-2023, the AMA emphasises the need for protection of pluralism through strengthening the supervision and regulation of broadcasting services, agreements on licencing of audiovisual media service providers, as well as, in particular, addressing issues of ownership and control of the media.⁶⁵

4.1.3. 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.

⁶¹ Media Ownership Monitor in Albania:

<https://albania.mom-rsf.org/en/findings/findings/#!6bd3d5b33331729e5ff3884482ab363b>.

⁶² Venice Commission Opinion on Draft Amendments to Law No. 97/2013 On the Audiovisual Media Service <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>, page 6.

⁶³ For more information see: Article 62 of Law No. 97/2013 ‘On audiovisual media in the Republic of Albania’, Source: <http://qbz.gov.al/eli/liqj/2013/03/04/97-2013>.

⁶⁴ Constitutional Court, decision No. 56 dated 27.07.2016:

https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=2242&nr_vendim=1 , page 18.

⁶⁵ Strategic Action Plan for 2021-2023:

http://ama.gov.al/wp-content/uploads/2020/11/AMA_STRATEGJIA_20212023.pdf, page 7.



Table 29. 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 2018 AVMSD Audiovisual media service providers should reserve most of their airtime for European works. This is a progressive obligation (Article 35).	Law on Audiovisual Media (2013), as amended 2023 Article 35
Exceptions to this rule	Yes – aligned with the 2018 AVMSD regarding the usual programming exceptions (Article 35(3)). And local media is also exempt (Article 36(3)).	As above, Articles 35(3) and 36(3)
Rules where a minimum percentage of content (for example 10%) of content broadcast (or of programme budgets) should be European works created by producers who are independent of broadcasters	Yes - aligned with the 2018 AVMSD Audiovisual media service providers reserve at least 10% of the airtime, or 10% of the programme budget for European works created by independent producers (Article 36).	As above, Article 36

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

From above it is clear that the Albanian Media Law is aligned with the AVMS Directive in relation to linear audiovisual media services. The service providers reach the required percentages progressively: taking into account the informational, educational, cultural and entertainment responsibilities they have towards the public.

Table 30. 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	Yes - aligned with the 2018 AVMSD The proportion is raised from 20% to 30% of European works on on-demand AVMS. *** As an explanation of the above - Article 10 of the AMA decision on provision of on-demand services also addressed the obligation for the promotion of European works from 2019, with a requirement of at least 20% of European works.	Law on Audiovisual Media (2013), as amended 2023 Article 77(1) *** AMA decision No. 152 dated 11 October 2019, the “Regulation on procedures and criteria for the provision of on-demand audio/audiovisual media services”



AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Exemptions for AVMS providers with a low turnover or a low audience?	No, the law does not include these exemptions	
Reference to European Commission guidelines regarding a) the calculation of the share of European works, and b) the definitions of low audience and low turnover of services?	No	
Inclusion of any financial contribution obligations for services targeting the country?	No – this possibility of financial contribution so far applies only to national on-demand services.	As above, Article 77 (2)

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

The national legislation was closely previously aligned with the 2018 AVMS Directive, as a Decision of the AMA from 2019 introduced a requirement for on-demand audiovisual media service providers to include at least 20% of European works in their catalogues. The promotion of European works is also emphasised in the requirements in the licensing policy of the AMA.⁶⁶ Following the passing of amendments by Parliament to the Law on Audiovisual media (2013) in April 2023 the provisions on European works are now aligned with the 2018 AVMS Directive. Possible exemptions are lacking but there may be a plan to formulate these in a future regulation of the NRA.

4.1.4. Rules on audiovisual commercial communications

This section looks at the rules on audiovisual commercial communications (ACC) 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.

⁶⁶ AMA's Regulation 'On licensing of numerical networks and their programmes through the Beauty Contest Procedure'/2020/ Rregullorja e AMA-s 'Për licencimin e rrjeteve numerike dhe programeve te tyre, nëpërmjet procedurës së beauty Contest'/2020 <http://ama.gov.al/wp-content/uploads/2020/11/Rregullore-per-licensimin-e-rrjeteve-numerike-dhe-programeve-te-tyre-nepermjet-procedures-se-Beauty-Contest.pdf>.



Table 31. 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	Law on Audiovisual Media (2013), as amended 2023 Articles 42(1) and (2)
ACC shall not prejudice respect for human dignity; promote discrimination; encourage behaviour prejudicial to health or safety; or encourage behaviour grossly prejudicial to protection of the environment	Yes – aligned with the 2018 AVMSD in both the Law and the AMA Code of Broadcasting	As above, Article 42(3) *** AMA’s Code of Broadcasting for Audiovisual Media, Article 7.3
ACC for the prescription of medicinal products and medical treatment shall be prohibited	Yes – aligned with the 2018 AVMSD in both the Law and the AMA Code of Broadcasting	Law on Audiovisual Media (2013), as amended 2023 Articles 42(1) and (2) Article 42(6) *** AMA Code of Broadcasting Article 7.5 and 7.6
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD - regarding programmes that cannot be sponsored. Prohibits sponsorship by companies, whose main activity is the production or marketing of cigarettes or other tobacco products, including electronic cigarettes and refill containers	Law on Audiovisual Media (2013), as amended 2023 Articles 45 (2), (4) and (5)
No product placement (PP) in news, current affairs, consumer affairs, religious, children’s programmes	Yes – aligned with the 2018 AVMSD Product placement is permitted in programming with the exception of news, current issues, consumer issues, with religious nature and children’s programmes. Also, Article 44 (5a) bans product placement of tobacco products.. *** The current AMA Regulation prohibits PP in informative sessions (presumably news or current affairs).	Law on Audiovisual Media (2013), as amended 2023 Article 44 (1) Article 44 (5a) *** AMA’s regulation “On Audio and/or audiovisual communications of commercial nature: forms, conditions and the allowed time of the day for their broadcast” Article 15



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
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.	Law on Audiovisual Media (2013), as amended 2023 Article 44(3)(a)(b) and (c)
Viewers shall be clearly informed of the existence of product placement in a programme	Yes – aligned with the 2018 AVMSD	As above, Article 44(4)
Are there rules limiting the proportion of television advertising spots and teleshopping spots: throughout the day; or during particular time periods?	Yes – aligned with the 2018 AVMSD The duration of advertising should not exceed 20% of the time-slot from 06:00 to 18:00 and should not exceed 20% of the time-slot from 18:00 to 24:00 (Article 41(1)). Certain programming (films and programmes) may be interrupted by advertisements or direct sales not more often than every 30 minutes (Article 43(3)). Children’s programming may be interrupted by advertisements not more often than every 30 minutes (Article 43(4). A new paragraph states that the insertion of direct sales during children’s programs is prohibited (Article 43(4/ 1). Article 38(2)(b) provides that “extended advertising should not be broadcast from 19.00 to 23.00.”	Law on Audiovisual Media (2013), as amended 2023 Article 41(1) Article 43(3), Article 43(4), Article 43(4/ 1), Article 38(2)(b)
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Yes – aligned with the 2018 AVMSD	As above, Article 41(1/1)

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

The Albanian legislative framework covering ACCs is aligned with the provisions of the 2018 AVMS Directive, since the adoption in May 2023 of the Law amending the Law on Audiovisual Media. Article 42 (regarding identification of ACCs and content issues) is applied directly to VSPs, but these issues are discussed in more detail under section 4.1.5. (below).



4.1.5. Provisions applicable to video-sharing platforms – VSPs

The Albanian legislation includes general principles addressing the protection of minors from harmful content, the prohibition of communications that incite violence or hatred, the prohibition of child pornography, racism and xenophobia (as detailed above). The Albanian Criminal Code partly addresses these issues, stipulating that “providing to the public or intentional distribution to the public, through computer systems, of materials with racist or xenophobic content constitutes a criminal offense and is punishable by a fine or up to two years of imprisonment” (Article 119/a) and “intentional public insult, through a computer system, to a person, due to ethnicity, nationality, race or religion, constitutes a criminal offense and is punishable by a fine or up to two years of imprisonment” (Article 119/b).

The amendments adopted by Parliament in April 2023 introduced a new Article 30/1 with the provisions on the criteria for establishment of the jurisdiction of VSPs. Some provisions on audiovisual commercial communications are included in the Law. The appropriate measures detailed in the Directive are not included in the Law but are intended to be elaborated in a secondary Act of the AMA.

Table 32. Obligations on video-sharing platforms regarding content

The AVMSD and provisions on VSPs 28b	In line with the AVMSD	References
Protecting minors from harmful content in programmes, user-generated videos and ACCs; protecting the general public from programmes, user-generated videos and ACCs containing incitement to violence or hatred as well as from criminal content – provocation to commit a terrorist offence; child pornography; racism and xenophobia.	<p>Yes – closely aligned with the 2018 AVMSD.</p> <p>Details on measures to be taken are not included in the law.</p> <p>Article 32 is applied to video-sharing platform providers. Article 32 (4) states that AVMS providers and VSP providers must not broadcast content that incites violence or hatred. Or content that encourages terrorist acts.</p> <p>A new Article 32/1 is introduced stating that without prejudice to the provisions of articles 15-20 of the law “On electronic commerce”, the video sharing platforms providers shall take necessary measures for: the protection of children from programs, user-generated videos and commercial communications that may</p>	<p>Law on Audiovisual Media (2013), as amended 2023</p> <p>Article 32 (4)</p> <p>Article 32/ 1 (4)</p>



	<p>harm their mental, physical or moral development;</p> <p>the protection of the general public from programs, user-generated videos and audiovisual commercial communications with content that incites violence or hatred against a group of persons or members of a group;</p> <p>the protection of the general public from content that constitutes a criminal offense in connection with child pornography, racism or xenophobia.</p> <p>The specific provisions of Article 32/1 (paras 1 and 2 and 3) are addressed only to audio visual media service providers. However, a new paragraph under Article 32 (para 4/1) states that “based on the principles defined in Article 4 of this law, European best practices, as well as after a public consultation process, AMA determines by regulation the special requirements that video distribution platform providers must fulfil for the creation and operation of the transparent effective and user-friendly systems, in implementation of obligations according to point 4 of this article and point 4 of article 32/1 of this law”.</p> <p>This does not specifically link to Article 32/1, point 1 requiring control measures, or point 2 regarding the collection of the data of minors, or point 3 which obliges AVMS providers to provide sufficient information on content that may harm the physical, mental or moral development of children.</p>	
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control	Yes, closely aligned with the 2018 AVMSD.	As above Article 42 (9)



(market, sell or arrange), and those controlled and uploaded by others.	Details on measures to be taken are not included in the law. No distinction is made between ACCs they control and those controlled and uploaded by others. Under Article 42 of the Law which addresses the content of advertising, a new paragraph has been added – para 9 - which states that “The obligations defined in this article, also apply in cases of communications of a commercial nature in programs and user-generated videos on video sharing platforms”	
VSPs should clearly inform users where programmes and user-generated videos contain ACC.	Yes, closely aligned with the with the 2018 AVMSD. Details on measures to be taken are not included in the law. Article 42 - ACCs should be recognisable	As above, Article 42 (1 and 2)
VSP 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 with the 2018 AVMSD.	As above, Article 42(8)

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

From the table above, it can be seen that some of the rules on the protection of minors for audiovisual media services have been directly applied to video-sharing platforms (by including them under Article 32/1). Article 32/1 (4) refers to the protection of minors and states that video sharing platforms providers shall take necessary measures for the protection of children from programs, user-generated videos and commercial communications that may harm their mental, physical, or moral development. This does not specifically link to Article 32/1, point 1 requiring control measures, or point 2 regarding the collection of the data of minors, or point 3 which obliges AVMS providers to provide sufficient information on content that may harm the physical, mental or moral development of children.

The rules regarding the protection of the general public from certain prohibited content (incitement to hatred or violence, incitement to acts of terrorism) outlined under Article 32 (4) (general rules) now also apply to video-sharing platforms as they have been included in the title of the Article. A new Article 32/1 is introduced that directly incorporates Article 28b (1).

The AMA is tasked with promoting public awareness, research and activities related to media education including public awareness regarding “Video-sharing platform providers” (Article 19 (2 ë)). However, obligations for VSPs to provide media literacy



measures and tools and raise users' awareness of those measures and tools are not mentioned.

The Law does not mention the range of appropriate measures detailed in the AVMS Directive, such as: including the obligations of VSPs regarding content in the Terms and Conditions for users of the platforms; reporting or flagging systems to report harmful content to the VSP provider; or content rating systems for users; or procedures for complaints to the VSP. It is possible that the intention is to detail these mechanisms in secondary Acts of the AMA (see further below).

With the introduction of a new paragraph under Article 42 (paragraph 9), the Law directly links the VSP services to the general obligations regarding identification of, and content of, ACCs. However, it does not distinguish between ACCs that they control (market, sell or arrange), and those controlled and uploaded by others.

The new Law does not include the stated measures in the AVMS Directive to address such obligations: including the obligations of VSPs regarding ACCs in the Terms and Conditions for users of the platforms; providing a functionality for users uploading content to declare the existence of ACCs in the user-generated content.

The Law also makes no reference to the provision of an out-of-court redress system. Hence, there has been a partial incorporation of the provisions applicable to video-sharing platforms in the recently amended law. The content obligations are clearly spelled out, but the methods of achieving the obligations are not. However, Article 32 (para 4/1) states that “based on the principles defined in Article 4 of this law, European best practices, as well as after a public consultation process, AMA determines by regulation the requirements for video-sharing platform providers in relation to these General rules”.

4.1.6. Concluding remarks and summary of findings

The Albanian legislative framework is now closely aligned with the 2010 AVMS Directive as amended by the 2018 AVMS Directive following the adoption by parliament of the Amendments to Law No 97/2013 "On Audio-Visual Media in the Republic of Albania" in April 2023.

The current legislation is well aligned as regards protection of minors, rules on audiovisual commercial communications and the promotion of European works.

The amendments to the Law have introduced some provisions on VSPs regarding the protection of minors, and certain illegal content, and also regarding audiovisual commercial communications. As noted above, much of the detail on the Directive is not included – particularly regarding appropriate measures – and further regulation by the AMA will be needed.

Regarding the general principles of non-discrimination, prohibition of incitement to hatred and violence, and prohibition of criminal content, these are well enshrined in the legislative framework – particularly in the Criminal Code, and now also in the recently



amended Law on Audiovisual Media. The amended law also strengthened obligations in the area of accessibility and transparency of media ownership.

Aside from the issues concerning the so called “anti-defamation package” (see below), concerns regarding freedom of expression have focused on the establishment of a Government Media and Information Agency intended among other things to manage communication with the media and public relations. The Balkan Investigative Reporting Network (BIRN) have also highlighted issues such as increased defamation lawsuits towards journalists and media outlets, an increase in physical and verbal threats to journalists, increased self-censorship and smear campaigns, the lack of transparency of public institutions, and a high concentration of ownership in the media and advertising market.

The provisions of the revised Directive regarding Independence of the NRA are covered in the national legislation. However, there has been concern regarding the independence of the AMA – in particular with regard to the appointment of the head of the AMA and also the board members.

By the Decision of the Council of Ministers, no. 91, dated 9 February 2022, “For the approval of the National European Integration Plan 2022-2024”, the partial transposition of the Directive is part of the National Plan for European Integration (NPEI) 2022-2024, and was to be addressed by the end of 2022. In June 2022, the Ministry of Infrastructure and Energy initiated the procedure to adopt a draft law “On some additions and changes to the law no. 97/2013 ‘On audiovisual media in the Republic of Albania’”.

The draft law was sent for consultations to the ministries (Ministry of Justice, Ministry for Europe and Foreign Affairs, Ministry of Finances and Economy, Ministry of Culture, Ministry of Health and Social Protection). By September 2022, formal opinions had been received from all ministries and work was done together with the Audiovisual Media Authority to reflect their suggestions. On 12 September 2022, the Albanian Government published a Draft Law No. / 2022 on amendments to the “Law on Audiovisual Media in the Republic of Albania” for consultation (until 15 December).

Further amendments were introduced in December – mainly covering provisions on video-sharing platforms – and the deadline for consultation extended to 22 December 2022. The Draft Law was passed by Parliament on 13 April 2023 and announced by Decree no. 62 dated 4.5.2023, of the President of the Republic of Albania on 4 May 2023.



4.1.7. The list⁶⁷ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024. List of relevant documents, reports, opinions etc.

Table 33. Relevant documents, reports, opinions

Title	Main topics/ themes	Link if available
EC (2022) Commission Staff Working Document Albania 2022 Report	EC report on Albania's progress as candidate for membership	In English https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022_en
EC (2021): Commission Staff Working Document Albania 2021 Report	EC report on Albania's progress as candidate for membership	In English: https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en
2021 Monitoring Report of Media Freedom Rapid Response	Media freedom, freedom of journalists	In English: https://www.mapmf.org/uploads/MFRR-Monitoring-Report_2021_en_page_19
US Department of State 2021 Albania Human Rights Report	Human rights	In English: https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/albania_page_11
(BIRN) 2020: Internet governance in Albania and its role in Media Freedom., From the Balkan Investigative Reporting Network	Internet governance, media freedom	In English: https://birn.eu.com/wp-content/uploads/2020/08/Internet-Governance-1.pdf
US Department of State 2020 Human Rights Report on Albania	Human rights	In English: https://al.usembassy.gov/wp-content/uploads/sites/140/ALBANIA-2020-HUMAN-RIGHTS-REPORT.pdf
JUFREX (2020): Technical Paper: European standards and case law references relevant to the	Legal analysis of law – regarding alignment with Venice	N/A

⁶⁷ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



Title	Main topics/ themes	Link if available
draft amendments to the Law No. 97/2013 “Audiovisual Media in the Republic of Albania” Prepared for the Council of Europe by Ms Mirela Bogdani, Mr Paolo Cavaliere and Ms Deirdre Kevin	Commission Opinion and with European Standards	
Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, adopted by the Venice Commission on 19 June	Legal analysis of law – intending to regulate online news portals/ online publications	<u>In English:</u> https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)013-e
OSCE (2019): Legal Analysis on the Draft Laws on Changes and Amendments to the Law on Audiovisual Media in the Republic of Albania (Proposal of a Law on Media Services). Prepared by Dr. Joan Barata Mir for the Office of the OSCE Representative on Freedom of the Media	Legal analysis of law – intending to regulate online news portals/ online publications	<u>In English:</u> https://www.osce.org/files/f/documents/4/3/425462.pdf
Media Ownership Monitor in Albania	Media ownership	http://albania.mom-gmr.org/en/findings/findings/!6bd3d5b33331729e5ff3884482ab363b

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

4.1.8. Data compilation

This country report is based on information and materials supplied by the national experts Ms Monika Canco, independent consultant and lecturer at the Faculty of Law, University of Tirana and Dr Mirela Bogdani, lecturer at the Faculty of Law, University of Tirana and Council of Europe consultant on freedom of expression.



4.2. Armenia (AM)⁶⁸ (Country report B⁶⁹)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- Armenia updated its audiovisual media legislation in 2020 – replacing the Law on Television and Radio (2000), with the Law on Audiovisual Media (2020).
- Various international organisations and experts expressed concerns regarding the 2020 Law on Audiovisual Media and its alignment with European standards. The government has since established a working group to develop amendments to the Law on Audiovisual Media (2020), and they published a draft set of amendments on 6 June 2022. Several amendments to the Law have been introduced in 2022 (June, October, December) and 2023 (March), the most pertinent of which are those related to accessible content and to provisions on non-discrimination.
- The Mass Media Law (2003) is also relevant in terms of general principles and key values such as freedom of expression and transparency of media ownership.
- A new Criminal Code entered into force in July 2022, which addresses discrimination, incitement to hatred, incitement to violence, incitement to terrorism and child pornography.
- Regarding general principles and key values, most are clearly outlined in the legislative framework, with rules on transparency of media ownership being particularly strong.

⁶⁸ The country report on Armenia incorporates the feedback received from Alla Tumanyan, Coordinator for International Relations at the Commission on TV and Radio of Armenia (CTR), during the checking round with the national regulatory authorities.

⁶⁹ Country report B summarises the findings of Questionnaire B in relation to Group III, which includes Armenia.



- Currently the obligations regarding accessibility for people with disabilities are limited.
- Issues raised by the national expert regarding freedom of expression are outlined in the text.
- The list⁷⁰ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.2.1. Introduction

Armenia was one of the European Neighbourhood Policy (ENP) countries that could benefit from a derogation within the Creative Europe regulation. To participate partially in the MEDIA strand of the Creative Europe programme, they had to fulfil general conditions and thus comply with general principles and key values promoted by the Audiovisual Media Services Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (hereafter referred to as the AVMS Directive or AVMSD).

This derogation concerns ENP countries satisfying the following conditions: essential minimum standards balancing freedom of speech and protection of citizens/vulnerable viewers underpinning the AVMSD such as prohibition of incitement to hatred or violence and protection of minors; and the independence of audiovisual media regulators.⁷¹

Relations between Armenia and the European Union are based on the EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA), which entered into force on 1 March 2021.⁷²

4.2.1.1. Relevant legal framework: current status and developments

The table below outlines the national legislative framework for the audiovisual media sector, including mainly those acts of most relevance to the issues addressed in this country report. It is important to note that this country report does not outline the national rules related to the entire AVMS Directive, but focuses on a selection of issues: definitions,

⁷⁰ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

⁷¹ Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021–2027) and repealing Regulation (EU) No. 1295/2013: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0818&from=EN>. Chapter 19 of the agreement covers cooperation in the audiovisual and media fields, including: (*inter alia*) dialogue regarding the development of audiovisual and media policies and reinforcing the independence and professionalism of the media; and also audiovisual and media cooperation, including cooperation in the field of cinema.

⁷² EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA), which entered into force on 1 March 2021: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22018A0126\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22018A0126(01)&from=EN)



jurisdiction, freedom of reception and retransmission, and a range of general principles and key values including freedom of expression, independence of the national regulatory authority (NRA), the protection of minors, the promotion of the rights of people with disabilities to access audiovisual content and the transparency of media ownership.

All relevant links appear in this first table. There are a range of regulatory acts but, for the sake of clarity, only those that relate to the issues addressed in this country report are included in the table. Others may be added in the footnotes where appropriate.

Table 34. Legal framework

Title	Status	Relevance	Link
Constitution of the Republic of Armenia 2015 Հայաստանի Հանրապետության Սահմանադրության Փոփոխություններ (Armenian)	In force	Fundamental rights	In Armenian: https://www.arlis.am/DocumentView.aspx?DocID=143723 In English: https://www.president.am/en/constitution-2015/
Mass Media Law, 2003 Չանգվածային լրատվության մասին օրենք (Armenian)	In force	Covers all media and issues of freedom of the media Covers transparency of media ownership	In Armenian: https://www.arlis.am/documentview.aspx?docid=1379 In English: https://mediainitiatives.am/wp-content/uploads/2017/11/RA-Law-on-Mass-Media_EN.pdf
Law on Audiovisual Media, 2020 Տեսալսողական մեդիայի մասին օրենք (Armenian)	In force	The main relevant legislation on audiovisual media covering traditional broadcasters; non-linear audiovisual media service providers; and, partly, (telecom) network operators	In Armenian: https://www.arlis.am/documentview.aspx?docid=145079 In English: https://bit.ly/3IVSpfb
Law of the Republic of Armenia On amendments and additions to the Law “on Audiovisual Media” (October 26, 2022)		Provisions on accessibility and non-discrimination	In Armenian https://www.arlis.am/documentview.aspx?docid=170539
Law on Advertising, 1996 Գովազդի մասին օրենք (Armenian)	In force	The main source of legislation/regulation on audiovisual commercial communications	In Armenian: https://www.arlis.am/DocumentView.aspx?DocID=75427 In English: http://www.parliament.am/legislation.php?sel=show&ID=1707&lang=eng



Title	Status	Relevance	Link
(New) RA Criminal Code Նոր Զրեական օրենսգիրք, (Armenian) հոդված	In force from 01/07/2 2	Provisions on discrimination, incitement to hatred, to violence, and incitement to terrorism	In Armenian: https://www.arlis.am/DocumentView.aspx?DocID=153080&fbclid=IwAR3coLwfWcCONlp004pKUCqJa1VkkRj5siXfb8kt7_jRPs51gTgxnNTPUQ In English: https://bit.ly/3LkSLxM

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

The new Law on Audiovisual Media (2020) replaced the outdated Law on Radio and Television and was intended to reflect the significant changes in the nature of content production and dissemination in the digitally transformed media environment. It covers the activities of linear and non-linear audiovisual media service (AMS) providers and, to some extent, (telecommunication) network operators. Local and international experts expressed concern regarding the law.

Local journalism organisations criticised the law for the low level of participation of the civil society in the drafting process, and for the poor quality of the bill. In a statement (disseminated on behalf of ten journalism organisations),⁷³ dated 8 July 2020, the Committee to Protect Freedom of Expression (CPFE) pointed out shortcomings in the bill. These related to issues such as: the development of Digital Terrestrial Television (DTT) and of local television channels on DTT; the failure to update the licensing procedure; and the fact that the transparency of broadcast media ownership was not ensured. They also noted that the document did not implement the necessary reforms in the sector and would not contribute to the solution of existing problems.

An expert analysis carried out for the Office of the Representative on Freedom of the Media at the Organisation for Security and Co-operation in Europe (hereafter, the OSCE Expert Report) highlighted several serious concerns about the compatibility of the law with international standards regarding freedom of expression.⁷⁴

A 2022 report of the Parliamentary Assembly of the Council of Europe (PACE), called on the Armenian authorities to adopt a comprehensive approach to reform of the media sector, including further alignment of the Law on Audiovisual Media with international standards on freedom of expression and other Council of Europe instruments.⁷⁵ The Ministry

⁷³ Statement of the Committee for Protection of Freedom of Expression (CPFE), July 2020, disseminated on behalf of ten journalism organisations, including the CPFE, the Yerevan Press Club, the Media Initiative Centre, the Freedom of Information Centre and others. In Armenian only:
<https://khosq.am/2020/07/08/հայտարարություն-58/>.

⁷⁴ “Legal Analysis of the Law of the Republic of Armenia ‘on Audiovisual Media’” (Adopted On 16 July 2020) from the Office of the OSCE Representative on Freedom of the Media. Prepared by Dr. Joan Barata Mir. Available at: <https://www.osce.org/files/f/documents/0/a/493522.pdf>, page 5.

⁷⁵ PACE Report 2022. ‘The functioning of democratic institutions in Armenia’: Report by the Council of Europe’s Parliamentary Assembly; Doc. 15432, 10 January 2022; available at: https://pace.coe.int/en/files/29803_p.125.



of High-Tech Industry recently established a working group by governmental decree to develop a package of amendments to the law. The national regulatory authority (NRA), the Commission of Television and Radio of the Republic of Armenia (CTR), is actively involved in the process and has prepared many recommendations and suggestions for consideration. On 6 June 2022 the Ministry of High-Tech Industry officially circulated a new draft of the amendments to the Audiovisual Law, which has been perceived as controversial by the local journalism organisations.⁷⁶

Several amendments to the Law were introduced in 2022 (June, October, December) and 2023 (March). They addressed a range of issues such as regulating electronic programme guides (EPGs) and details of Digital Terrestrial Television (DTT) licensing. The most relevant to the alignment with the AVMS are those related to accessible content and to provisions on non-discrimination (of October 2022), which have been added to the Factsheet below.

4.2.1.2. Definitions and alignment with the AVMS Directive

The table below provides an overview of the definitions used in the Armenian legislative framework and the extent to which they align with the AVMS Directive.

Table 35. Definitions

Definitions (Article 1 AVMSD)	In line with the AVMSD	References
Audiovisual media service	No definition in the laws.	
Programme	Partially – aligned with both the 2010 and 2018 AVMSD. It does not include the phrase “within a schedule or a catalogue established by a media service provider”.	Law on Audiovisual Media, Article 3 (paragraph 1), point 19
Editorial decision	No definition in the laws.	
Editorial responsibility	No definition in the laws.	
Media service provider	This is close to alignment with the 2018 AVMSD. It lacks the phrase whereby the AVMS provider determines the manner in which it (the content) is organised. It covers AVMS provider (and Broadcaster, audio media service provider, and audio programme broadcaster).	As above, Article 3 (paragraph 1), point 1

⁷⁶ Text of the draft amendments: https://www.e-draft.am/projects/4418/about?fbclid=IwAR2vvi3Cptl8X_g-V1cNtKBGICHN_5JdYx2U5a8ThyE5fBRA-C3EO9EX12M

Text of the statement from journalism organisations:

<https://khosq.am/2022/06/20/%d5%b0%d5%a1%d5%b5%d5%bf%d5%a1%d6%80%d5%a1%d6%80%d5%b8%d6%82%d5%a9%d5%b5%d5%b8%d6%82%d5%b6-98/>



Definitions (Article 1 AVMSD)	In line with the AVMSD	References
Television broadcasting or television broadcast	No definition in the laws.	
Broadcaster	Same as for Media Service Provider.	As above, Article 3 (paragraph 1), point 1
On-demand audiovisual media service	Yes – it aligns closely with the 2018 AVMSD – but describes on-demand content rather than an on-demand service.	Law on Audiovisual Media, Article 3 (paragraph 1), point 17
Audiovisual commercial communication (ACC)	The field is regulated by the law on Advertising, however, there is no clear definition of ACCs.	
Television advertising	Yes – similar to the 2018 AVMSD but entitled “audiovisual advertising”.	As above, Article 3 (paragraph 1), point 22
Surreptitious ACC	No definition in the laws.	
Sponsorship	Yes – this is aligned with the 2010 AVMSD, but not with the 2018 AVMSD: it lacks reference to video-sharing platform (VSP) services and user-generated videos.	As above, Article 3 (paragraph 1), point 22
Teleshopping	Definition of teleshopping is not available – but this article provides general regulations of TV advertising.	Law on Advertising Article 9
Product placement	No definition in the laws.	
European works	No definition in the laws.	
Independent producer	No definition in the laws.	
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	<p>There are no clear definitions of harmful content.</p> <p>The Mass Media Law prohibits the dissemination of information that advocates criminally punishable acts, as well as information that violates the right to privacy of ones’ personal or family life.</p> <p>***</p> <p>The Law on Audiovisual Media prohibits the dissemination, through audiovisual programmes, calls for any acts prohibited by the law under Article 9 (1). Article 9 (7) prohibits audiovisual programmes from promoting or containing information that promotes discrimination based on national, racial, gender or religious affiliation.</p>	<p>Mass Media Law, Article 7</p> <p>***</p> <p>Law on Audiovisual Media, Article 9 (1) Article 9 (7)</p>
Definition of incitement to hatred (or equivalent)	The new Criminal Code (in force since 1 July 2022) has a new Article 329 on hate speech, which criminalises any action aimed at the incitement of national, ethnic, racial, political, ideological or religious hostility, hatred or intolerance, as well as the incitement of hatred, intolerance or hostility against another social group.	New Criminal Code of the Republic of Armenia, Article 329



Definitions (Article 1 AVMSD)	In line with the AVMSD	References
	<p>***</p> <p>As noted above, it is prohibited for audiovisual programmes to promote, or contain information that promotes, discrimination based on national, racial, gender or religious affiliation. Article 9 (7).</p>	<p>***</p> <p>Law on Audiovisual Media, Article 9 (7)</p>

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

The Armenian legislative framework includes definitions for programmes, (audiovisual) media service providers, on-demand services, television advertising and sponsorship, most of which are aligned with the AVMS Directive. It lacks more detail on ACCs in a broader sense (although there is a specific law that addresses new advertising techniques) and on definitions relative to VSPs in the 2018 AVMSD. The concepts of editorial decision and editorial responsibility are also not defined – although editorial responsibility is included in the definition of media service provider. Due to the new Criminal Code, there is a definition of, and prohibition of, incitement to hatred.

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

4.2.1.3.1. Jurisdiction

There is no alignment in the Armenian legislative framework with the concept of establishment of jurisdiction as outlined under Article 2 of the 2018 AVMSD. An expert review carried out on behalf of the OSCE highlighted several concerns about the compatibility of the Law on Audiovisual Media with international standards. The main arguments included the need to incorporate the jurisdiction criteria recommended by regional and comparative standards, focusing on the country of origin and main establishment of the AVMS providers.⁷⁷ Although not obliged to in the provisions of the law, the NRA does keep a list of audiovisual media services.

4.2.1.3.2. The principle of freedom of reception and retransmission

The right to freedom of expression in the Constitution of the Republic of Armenia includes the right to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers. Types of prohibited content in programming are outlined in Article 9 of the Law

⁷⁷“LEGAL ANALYSIS OF THE LAW OF THE REPUBLIC OF ARMENIA ‘ON AUDIOVISUAL MEDIA’” (ADOPTED ON 16 JULY 2020) Commissioned by the Office of the OSCE Representative on Freedom of the Media and prepared by Dr. Joan Barata Mir. Available at: <https://www.osce.org/files/f/documents/0/a/493522.pdf>, page 5



on Audiovisual Media. They pertain to content which: instigates national, racial and religious hostility or spreads conflicts; campaigns for a war; or has the purpose of glorifying violence and cruelty. However, no reference is made to content provided on services received in the Republic of Armenia but established outside its jurisdiction. This omission can also be linked to the lack of a clear set of jurisdiction criteria focusing on the country of origin and main establishment (as noted above), and to the fact that Armenia is not a party to the European Convention on Transfrontier Television (ECTT),⁷⁸ where the concept of freedom of reception and retransmission is enshrined.

4.2.2. General principles 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 of the country report – namely: non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content.

Table 36. General principles and key values

General principle/key value	Relevant provision/provisions	References
Principle of non-discrimination	<p>The Constitution of the Republic of Armenia, under Article 29, prohibits discrimination on the basis of various grounds, affiliations and personal characteristics: sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances.</p> <p>***</p> <p>The new (as of July 2022) Criminal Code gives a complete definition of discrimination and makes it a criminal liability.</p> <p>It defines discrimination as: a differential treatment, which degrades the person's honour and dignity or their rights and freedoms or by which the person gets advantages, absent of any objective grounds or reasonable explanation. The grounds are based on those outlined in the Constitution. The provision includes punishments via fines, public works or a maximum of two years' imprisonment (Article 203 (1)).</p> <p>Article 203 (2) focuses on discrimination exercised by the use of authority or official powers or influence, and outlines a range of punishments including fines, public works, deprivation of the right to occupy certain posts, or imprisonment for a maximum of two years.</p>	<p>Constitution of the Republic of Armenia, Article 29</p> <p>***</p> <p>(New) Criminal Code, (1 July 2022)</p> <p>Article 203 (1) and (2)</p> <p>***</p> <p>Law on Audiovisual Media, Article 9 (7)</p> <p>***</p> <p>Law of the Republic of Armenia On amendments and additions to</p>

⁷⁸ <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=132>



General principle/key value	Relevant provision/provisions	References
	<p>***</p> <p>The Law on Audiovisual Media, prohibits audiovisual programmes from promoting or containing information that promotes discrimination based on national, racial, gender or religious affiliation Article 9 (7)).</p> <p>***</p> <p>Recent amendments adjusted Article 9 (7) to include the promotion of discrimination based on “disability”</p> <p>Under Article 22 (6c) broadcasters should also provide programmes aimed at overcoming stereotypes that contain discrimination based on nationality, race, religion, age, disability, or other grounds of a personal or social nature.</p>	<p>the Law “on Audiovisual Media” (October 26, 2023), Amending Article 9 (7)</p> <p>Article 22 (6c)</p>
<p>Prohibition of incitement to hatred and incitement to violence</p>	<p>The Constitution prohibits the use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war (Article 77).</p> <p>***</p> <p>Under the new (from July 2022) Criminal Code, a new article on hate speech criminalises any action aimed at the incitement of national, ethnic, racial, political, ideological or religious hostility, hatred or intolerance, as well as the incitement of hatred, intolerance or hostility against another social group (Article 329).</p> <p>***</p> <p>The Armenian Criminal Code currently legislates against hate speech under Article 226 which prohibits actions aimed at the incitement of national, racial, ethnic or religious hostility, racial superiority or humiliation of national dignity. This offence is aggravated if it is committed, <i>inter alia</i>, publicly or by mass media. In April 2020, a new and more complex Article 226.2 was introduced which prohibits the public call for violence against a person or group of persons (based on the grounds outlined in the Constitution). This includes acts such as publicly justifying or advocating such violence.</p> <p>(This Article is in the new Criminal Code as Article 300).</p>	<p>The Constitution of the Republic of Armenia, Article 77</p> <p>***</p> <p>Acting Criminal Code, (Until July 2022)</p> <p>***</p> <p>New Criminal Code, (as of July 2022)</p> <p>Article 329, 300</p>
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia; incitement to terrorism</p>	<p>The Criminal Code of Armenia prohibits the distribution and preservation via computer systems of child pornography materials (Article 263 of the current code and Article 300 of the new Criminal Code). Provocation to commit a child pornography act is prohibited under the Article 202 of the new Criminal Code. The new Criminal Code also prohibits provocation to commit acts of racism and xenophobia (Article 329) and incitement to terrorism (Article 313)</p>	<p>Acting Criminal Code, (until July 2022)</p> <p>Article 263</p> <p>***</p> <p>New Criminal Code, Articles 202, 300, 239, 313</p> <p>***</p>



General principle/key value	Relevant provision/provisions	References
	In the Law on Audiovisual Media, it is prohibited to disseminate, through audiovisual programmes, calls for any acts prohibited by the law (Article 9, clause 1).	Law on Audiovisual Media, Article 9 (7)

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

Each of these first three principles: non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content are covered in the legislative framework. With the introduction of a new Criminal Code (as of July 2022), the legislative framework has strong provisions regarding non-discrimination, hate speech, incitement to hatred, incitement to violence, and child pornography. In the Law on Audiovisual Media, it is prohibited for audiovisual programmes to promote or contain information that promotes discrimination based on national, racial, gender or religious affiliation. Recent amendments (October 2022) included the grounds of “disability” to the other characteristics. More broadly, the Law on Audiovisual Media prohibits the dissemination via audiovisual programmes of calls for any acts that are prohibited by the law.

According to the national expert, Armenia currently lacks any civil law measures directly prohibiting hate speech. Whilst there are provisions which outlaw insult and defamation, they do not explicitly include hate speech. So, whilst some civil disputes may involve hate speech under the Civil Code, the claim must be formulated on the basis of insult or defamation. There is also a distinct absence of a comprehensive non-discrimination legal framework. The draft law on Ensuring Legal Equality has yet to be adopted, and any progress with its implementation appears to be suspended. This is a major gap in the legislation which substantially weakens the redress mechanisms against hate speech.

There is also an absence of any administrative law provisions on hate speech. Administrative law can play an effective role in curbing hate speech practices where the severity and public danger of hate speech do not reach the minimum threshold of the criminal law, but where there is still a general need to regulate it in the interests of public order and peace. Administrative sanctions are also less onerous and stigmatising than those meted out in the criminal law, and so can help when trying to undertake the delicate balancing act between freedom of expression and the protection of society against hate speech.

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

Freedom of expression, freedom of the media, and the prohibition of censorship are all dealt with in the legislative framework: in the Constitution, the Law on Audiovisual Media, and the Law on Mass Media.

**Table 37. Freedom of expression**

General principle/key value	Relevant provision/provisions	References
Freedom of expression/freedom of the media	The Constitution protects the right to freedom of expression, and the right to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers (Article 42 (1)). Article 42 (2) also guarantees the freedom of the media. The state should guarantee the independence of public television and radio (Article 42 (3)).	The Constitution of the Republic of Armenia, 2015, Article 42 (1, 2, 3)
Prohibition of censorship/protection of the independence of broadcasters	Censorship is prohibited under Article 4 of the Law on Audiovisual Media. It also guarantees the right to freedom of choice and the production and distribution of audiovisual information. Article 17 also prohibits interference in the activities of broadcasters and operators, except in the cases prescribed by law.	Law on Audiovisual Media, 2020, Article 4, Article 17
Freedom of the media/freedom of expression/prohibition of censorship	Article 4 (3) guarantees freedom of speech. The following is prohibited: censorship; compelling media workers or journalists to disseminate or refrain from the dissemination of information; interfering with the legitimate professional activities of a journalist; discrimination in the public circulation of appliances and materials necessary for the dissemination of information; the restriction of a person's right to exploit media products of his/her choice, including those from other countries.	Mass Media Law, 2003, Article 4 (3)

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

As can be seen from the table above, the principles of freedom of expression and freedom of the media are clearly enshrined in the national legislative framework. However, according to the national expert, there have been a number of issues in recent years in relation to the protection of freedom of expression and freedom of the media. Armenia has dealt with a major national crisis in recent years: the 2020 Nagorno-Karabakh war, which led to an unprecedented level of disinformation and hate speech. This has led the authorities to severely restrict the independence of journalists and freedom of expression, albeit temporarily,⁷⁹ and has prompted legislative responses that lacked the necessary consensus-building to ensure the quality and ownership of these responses. During the war, on 27 September 2020, the government issued a decree that included the requirement for journalists to disseminate only official information on military operations. There were penalties (fines and potential prison sentences) for infringements, i.e. the publication or

⁷⁹ "The Functioning of Democratic Institutions in Armenia", PACE Report, 2021, available at: <https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisoires/2021/20211217-ArmeniaInstitutions-EN.pdf>, paragraph 119.



dissemination of information during the period of martial law, defined as “causing harm to the legitimate rights”.⁸⁰

During the COVID-19 pandemic, amendments to the Criminal Code and the Administrative Code were discussed by the National Assembly, proposing that any organisation engaged in journalism would only be able to publish information on Coronavirus once this information had been published by official sources, namely by the authorities. Fines would be introduced for failure to comply. Press representatives and the OSCE Representative on Freedom of the Media criticised the disproportionate nature of this restriction on freedom of expression and pointed to the role of media outlets in combating the dissemination of false information.⁸¹ In April 2020, the contested provisions were withdrawn, and no media outlets were fined.

The PACE report noted that in reacting to both the dissemination of false information and publications likely to cause panic in the context of the Coronavirus pandemic and the restrictions imposed by martial law, the authorities tended to take drastic measures which were manifestly excessive in view of the curbs they placed on freedom of expression, even if the aim pursued was legitimate.⁸² Both of these events – the COVID-19 pandemic and the war – have led to a rise in hate speech and other illegal content on social platforms and in traditional media. Disinformation became widespread, and distrust in policymakers and politicians increased. The government was forced to devote its energy to responding to falsehoods instead of communicating information of public interest. Disinformation, both in the traditional media, and especially on the internet became a major concern as reported by civil society organisations (CSOs) and other media watchdogs.⁸³ Regarding hate speech, several professional unions have attempted to self-regulate in order to prohibit hate speech. Professional NGOs and media organisations have launched various programmes and platforms, with the aim of tackling disinformation.⁸⁴

The safety of journalists is a concern in Armenia, although the professional rights of journalists are protected under Article 164 of the Criminal Code. Physical violence and attacks against journalists have decreased in recent years but in 2021, several cases of violence against journalists were registered. Attacks of previous years have not been properly followed up, and not one person has been found criminally liable for attacking journalists in 2020 or 2021. This impunity emboldens the perpetrators of the crimes and, at the same time, has a chilling effect on society, including journalists.

Other concerns regarding the right to freedom of information, as highlighted by the national expert, include digital security, with frequent hacking of the websites and the

⁸⁰ Decree No. 1586-N of the Government of the Republic of Armenia of 27 September 2020 on “Declaring martial law in the Republic of Armenia”: <https://rm.coe.int/16809f8c> and its Annex: <https://rm.coe.int/16809f8d>

⁸¹ “Coronavirus response should not impede the work of the media in Armenia, says OSCE Media Freedom Representative”, 24 March 2020: <https://www.osce.org/representative-on-freedom-of-media/449098>

⁸² PACE Report 2022. ‘The functioning of democratic institutions in Armenia’: Report by the Council of Europe’s Parliamentary Assembly; Doc. 15432, 10 January 2022, available at: <https://pace.coe.int/en/files/29803>, p. 125

⁸³ The Mapping of the Media in Armenia in the Context of the Fight Against Dis/Misinformation, Freedom of Information Centre, December 2021: <http://www.foi.am/en/research/item/2184/>

⁸⁴ Developed by organisations such as the Freedom of Information Centre, various Armenian universities and schools, the Public Journalism Club, CivilNet, Armenian Public TV, Factor TV, the Media Initiatives Centre.



official Facebook pages of media outlets; access to information for the media and the lack of effective enforcement mechanisms.

Amendments to the Law on Mass Media in 2020 and 2021 introduced a new concept – that of “unidentified sources of information” which, according to the national expert, has generated a high degree of legal uncertainty and created risks of unnecessary restriction on journalists’ right to protect their sources of information. Overall, the current legal framework regulating the media sector is considered outdated and insufficient to enhance freedom of expression and the media, according to the national expert.

There was widespread concern regarding the adoption in 2021 of an amendment to the Republic of Armenia Criminal Code, which defined “grave insult” (new Article 137.1) and stipulated fines (approximately EUR 2 500 to EUR 5 000) and a maximum prison sentence of three months.⁸⁵ The Human Rights Defender of Armenia applied to the Constitutional Court to check the constitutionality of this article on “grave insult”. The court session was scheduled for 26 April 2022.⁸⁶ According to news reports of 14 June 2022, the Minister of Justice, Karen Andreasyan, announced the cancellation of the article criminalising grave insults.⁸⁷ Thus, “grave insult” will no longer be a criminal offence in Armenia from 1 July 2022. More than 800 criminal cases had already been filed on the basis of this article, and it is unclear what will happen with these cases, or with the cases already examined, or with people already convicted under this provision.

The Council of Europe experts concluded that the growing trend on criminalisation of speech incidents in Armenia is clearly not aligned with international legal, including Council of Europe, standards. They noted that the response to political tensions during the war and its aftermath, alongside the societal challenges during the pandemic, amounted to criminalising certain speech and was legally disproportionate and inadequate in terms of the policy.⁸⁸

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

The Commission on Television and Radio of the Republic of Armenia (CTR) is the NRA for the audiovisual sector. The CTR is engaged, *inter alia*, with the licensing and authorising of audiovisual media services, the authorisation of digital terrestrial television (DTT) multiplexes, the monitoring of content including during elections, the handling of complaints and the development of policies.

⁸⁵ A new article 137.1 was added to the Criminal Code, which provided the definition and the criminal liability for it.

⁸⁶ The constitutional court decided that the article was in line with the Constitution. <https://www.azatutyun.am/a/31827364.html>

⁸⁷ Armenia decriminalizes “grave insults”: <https://jam-news.net/armenia-decriminalizes-grave-insults/>

⁸⁸ Armenian Media Sector Needs Assessment Report - 2022 Update, Overview of the National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with Council of Europe Standards, CoE, page 27.



Table 38. Independence of the National Regulatory Authority (NRA)

The AVMSD and the independence of NRAs (Article 30)	In line with the AVMSD	References
NRAs should be legally distinct from, and functionally independent of government.	Yes – aligned with the 2018 AVMSD. The Constitution under Article 196 (1) states, <i>inter alia</i> , that the CTR shall be an independent state body, which ensures the freedom, independence and plurality of broadcasting media.	The Constitution of the Republic of Armenia, Article 196 (1)
NRAs should exercise their powers impartially and transparently.	Yes – aligned with the 2018 AVMSD. The NRA should carry out its activities on the basis of the principles of legitimacy, democracy, equality, impartiality, independence, collegiality and publicity (Article 33). Members of the Committee also take an oath that includes a commitment to impartiality and honesty (Article 34(6)). The NRA submits an annual report to the National Assembly each year (Article 36(6)).	Law on Audiovisual Media, Articles 33, 34(6) and 36(6)
Clear definition of the competences and powers of the NRAs outlined in the law.	Yes – aligned with the 2018 AVMSD. The activities, competences and powers of the NRA are outlined in detail in Article 32.	As above, Article 32
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets.	Yes – aligned with the 2018 AVMSD. Article 38 (3) ensures the financial independence and stability of the NRA. The request for budget funding of the state regulatory body shall be included by the government unchanged, where adopted, and changed – in the case of objections – in the draft state budget.	As above, Article 38 (2)
Clear conditions and (transparent and non-discriminatory) procedures for the appointment and dismissal of the heads of NRAs/members of governing bodies are laid out in the law.	Yes – aligned with the 2018 AVMSD. This covers professional requirements for candidates, and other issues that influence qualification: conflict of interest, links with political parties, etc. (Article 34). Article 35 outlines in detail the procedures for selection of the members of the NRA. They are voted on by the Assembly on the basis of a committee recommendation. The chairperson of the NRA is elected by the regulatory body from its own members. Conditions that could lead to the termination of powers (both of members and the chairperson) are: violations regarding incompatibility requirements; illness or incapacity; failure to attend meetings; failure to inform regarding non-participation; refusing to participate in voting – aside from exceptions provided for in the law (Article 37). Conditions that could lead to dismissal (both of members and the chairperson): expiry of the term of powers; expiry of term; loss of citizenship; criminal conviction; loss of legal capacity; resignation; death (Article 38).	As above, Articles 34, 35, 37 and 38



The AVMSD and the independence of NRAs (Article 30)	In line with the AVMSD	References
Existence of effective and independent appeal mechanisms.	<p>Partially aligned: according to the national expert there is no clear procedure for appeal and revision of decisions of the NRA. The only appeal procedure is a court appeal which might take years and hence lack impact.⁸⁹</p> <p>Article 32 (13) states that the NRA shall examine and give a response or conclusion with regard to complaints, suggestions and inquiries on the activities of the broadcasters, operators and distributors.</p> <p>The CTR also works on the basis of other laws such as the Law on Administration Bases and Administrative Proceedings and according to Chapter 10 of this Law, anyone can appeal a decision of the CTR. They can also appeal directly to the Commission, or they can appeal to the court.</p>	<p>Article 32 (13)</p> <p>Law on Administration Bases and Administrative Proceedings</p>
Provisions in the law that support cooperation between NRAs.	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Under Article 31 (3) the NRA shall, within the scope of its competence represent the Republic of Armenia in other states and international organisations. The NRA may cooperate with the relevant establishments of other states and interested international organisations.</p>	<p>Law on Audiovisual Media, Article 31 (3)</p>

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

The table above indicates that the Armenian legal framework incorporates the provisions of the 2018 AVMS Directive regarding the independence of the NRA. The status and independence of the CTR are specifically addressed under the Armenian Constitution – defining the scope of authority of the NRA, as well as its composition and rules on the appointment of members. The Law on Audiovisual Media (2020) stipulates the specific rules on the status and powers of the NRA, and also establishes the details of the procedures for the nomination and election of the members of the Commission.

While the NRA was provided with *de jure* independence in the Law on Audiovisual Media, it was recommended (in the OSCE Expert Report) that the law should also include some additional provisions; these would include, for example, engaging civil society, journalistic organisations and other relevant organisations in the nomination and/or appointment process for the members of the board of the NRA.⁹⁰ The same review also stressed that the law should

require accredited knowledge and top-level professional experience, or technical, journalistic or economic experience connected to media legal and ethical matters, as well

⁸⁹ For example, a relevant case is the appeal of the A1plus TV station which was deprived of its license in 2002 and whose appeal is pending before the ECtHR.

⁹⁰ OSCE Expert Report, p. 4



as high ethical standards (absence of previous criminal convictions in cases related to corruption or management of public or private companies, for example).⁹¹

Regarding financial security, it has been recommended that it is necessary to provide for further legislative guarantees for the NRA so that it can count on sufficient funds in order to perform its activities in an efficient, proper and independent manner.⁹² A further recommendation is to employ a system comprising of a long-term, five-year budget, with an indexation for inflation. According to the national expert, the need for reinforcing the *de facto* independence of the NRA is an imperative for good media governance in Armenia. Moreover, the NRA will need support in various forms to further professionalisation and adherence to the regulatory challenges faced by all regulators in the Council of Europe member states with regard to platform regulation and other emerging trends.

4.2.2.3. The protection of minors

This section outlines 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 providers to protect minors from harmful content; with regard to protecting minors from harm in the context of ACCs; and to protect minors from prohibited/restricted advertising.

Table 39. The protection of minors

The AVMSD and the protection of minors (Articles 6a, 9, and 11)	In line with the AVMSD	References
Obligations to protect minors from harmful content, via a watershed/scheduling, age verification tools or other technical measures	Yes – Aligned with the 2010 AVMSD Article 9 (3) prohibits the broadcast of programmes with erotic content and films containing horror and explicit violence, as well as programmes with potential negative impact on the health, mental and physical development of minors outside of the timeframe of 24:00 to 6:00 Article 57 deals with penalties for violation of the above. *** Two CTR decisions from July 2021 provided clarity regarding the criteria for identifying audiovisual programmes having a possible negative impact on the health, mental and physical development of minors; and audiovisual programmes containing erotic content, horror and obvious violence. ⁹³	Law on Audiovisual Media, Article 9 (3), 57 *** Decision of the CTR of 1 July 2021 on the criteria for audiovisual programmes having possible negative impact on the health, mental and physical development of minors ⁹⁴ *** Decision of the CTR of 1 July 2021 on the criteria

⁹¹ OSCE report, page 17.

⁹² OSCE Expert Report, p. 4.

⁹³ Based on these decisions, on 24 March 2022 two administrative cases were filed by the Commission against two TV stations, “TV 5” and “Nor Hayastan” (New Armenia) and a fine was imposed in the amount of AMD 400,000 for violating the set standards.

⁹⁴ <http://tvradio.am/wp-content/uploads/2021/06/109-21.pdf>



The AVMSD and the protection of minors (Articles 6a, 9, and 11)	In line with the AVMSD	References
		for erotic content and horror and films containing obvious violence ⁹⁵
Prohibition against the commercial use of personal data of minors collected when implementing these measures	Not mentioned in the relevant laws or regulations.	
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	Yes – Aligned with the 2018 AVMS Two CTR decisions from July 2021 provided clarity regarding the criteria for identifying audiovisual programmes	See decisions above
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	Yes – Aligned with the 2018 AVMS Article 57 (8) prohibits ACCs for strong alcoholic beverages (with 20% or more alcohol) and ACCs for tobacco and tobacco production in the period between 06:00 and 22:30 It also prohibits the direct or indirect use or display of tobacco or types of tobacco products in audiovisual programmes for children and youth. *** Article 14 of the Law on Advertising bans the placement of advertisements for alcoholic drinks and tobacco in radio and TV programmes for children and teenagers. ⁹⁶ The use of images of minors in audio or any other form in advertisements is prohibited, unless it refers to products intended for minors (Article 14, clause 3). Article 15 prohibits addressing minors directly in the advertisement of alcoholic beverages and tobacco.	Law on Audiovisual Media, Article 57 (8) *** Law on Advertising, Articles 14 and 15
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – Aligned with the 2018 AVMS Article 14 (1) of the Law on Advertising bans advertising where b) there is content that can cause moral or physical harm to minors; c) or where there is a violation of the trust between minors and parents/ educators.	Law on Advertising, Article 14 (1)
Effectively reduce the exposure of children to ACCs for such foods and	No regulation is available.	

⁹⁵ <http://tvradio.am/wp-content/uploads/2021/06/110-21.pdf>

⁹⁶ In print media targeting persons under the legal age, as well as in children's, educational, medical, cultural, sports organisations, institutions and on their territories.



The AVMSD and the protection of minors (Articles 6a, 9, and 11)	In line with the AVMSD	References
beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)		
Prohibition against product placement in children's programmes	Not specifically, aside from the ban on the advertising, display or use of certain products before the watershed – namely alcohol and tobacco.	Law on Audiovisual Media, Article 57

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

The national framework includes obligations to protect minors from harmful content, with a particular emphasis on rules around the watershed and scheduling. It does not yet reflect the need for additional tools in the age of digital media such as age verification tools or other technical measures. The framework is well aligned with regard to prohibitions (or limitations) on certain products such as cigarettes, tobacco products (although not e-cigarettes), alcoholic beverages, etc. In fact, there are strong rules that should effectively reduce the exposure of minors to ACCs for alcoholic beverages. However, the legislative framework does not yet address the issue of reducing the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).

According to the national expert, there needs to be more monitoring on the part of the Armenian regulator (the CTR) to detect violations regarding harmful content; this would need to be resourced. In addition, self-regulation would need to be further supported and strengthened. Regarding self-regulation and the protection of minors, the most relevant organisation is the Media Ethics Observatory (MEO). The Observatory, established under the professional media ethics initiative, resolves disputes between individuals and media entities that voluntarily signed up to the Code of Ethics.⁹⁷ The MEO Code of Conduct contains several provisions regarding the protection of minors. These mainly focus on the participation of minors in the media – where information is published about minors, where minors are the focus of a news report – issues of identification and privacy, permissions from the minor and his/her guardian, and the avoidance of causing any harm to minors in interviews.

In February 2022, a memorandum was signed between the MEO and the CTR to cooperate within the framework of ethical standards.⁹⁸ There are a number of ongoing media and information literacy initiatives, however they do not specifically deal with the

⁹⁷ As of April 2022, the Code of Ethics of the MEO has been signed by 69 Armenian media outlets and the initiative is supported by eight journalism associations. Media representatives who have signed the Code of Ethics acknowledge the right of the MEO to examine the conformity of their acts and publications to the provisions of the Code and state their willingness to publish decisions of the MEO in their media.

⁹⁸ Armenian text of the Memorandum from the CTR website:

<http://tvradio.am/wp-content/uploads/2022/02/%D5%80%D5%A1%D5%B4%D5%A1%D5%A3%D5%B8%D6%80%D5%AE%D5%A1%D5%AF%D6%81%D5%B8%D6%82%D5%A9%D5%B5%D5%A1%D5%B6-%D5%B0%D5%B8%D6%82%D5%B7%D5%A1%D5%A3%D5%AB%D6%80.pdf>



protection of minors, but rather focus on media literacy and fact-checking in the media, and the fight against dis/misinformation. The Freedom of Information Center,⁹⁹ in cooperation with the government, is developing a comprehensive strategy and action plan for the fight against disinformation in Armenia to be ready by June 2022. The issue of protection of minors will be covered in the framework of the strategy.¹⁰⁰

4.2.2.4. 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 services are made “continuously and progressively more accessible”.

Table 40. Accessibility

The AVMSD and the accessibility of audiovisual media services (Article 7)	In line with the AVMSD	References
<p>Ensuring – without undue delay – that services provided by media service providers are made continuously and progressively more accessible.</p>	<p>Aligned with the 2010 AVMSD.</p> <p>There are provisions for broadcasters who broadcast children’s and/or news audiovisual programmes: they are obliged to broadcast at least one children’s programme and one news audiovisual programme with sign language interpretation or with Armenian subtitles, during the hours prescribed by the state regulatory body. These hours were outlined in the following decision.</p> <p>***</p> <p>The decision states that news with sign language translation or Armenian subtitles must be broadcast between 17:00 and 22:00.</p> <p>Children’s programmes with sign language translation or Armenian subtitles must be broadcast on weekdays between 16:00 and 21:00 and at weekends between 10:00 and 17:00.</p> <p>***</p>	<p>Law on Audiovisual Media, Article 6</p> <p>***</p> <p>Decision of the CTR#82-U dated 28 August 2020¹⁰¹</p> <p>***</p> <p>Law of the Republic of Armenia On amendments and additions to the Law “on Audiovisual Media” (October 26, 2023), Amending Article 6 (4) Article 22, new paragraph 4</p>

⁹⁹ <http://www.foi.am/en/>.

¹⁰⁰ The “National Strategy Against Disinformation” was made public on 6 July 2022. In English: http://www.foi.am/u_files/file/DOCs%202022/Strategy_FOICA_CIFE_ENG.pdf.

¹⁰¹ Decision of the National Commission of TV and Radio #82-U dated on 28 August <https://www.arlis.am/DocumentView.aspx?docid=145690&fbclid=IwAR3vsgwDs9BX-m4msg6LMjZn1cCOqnRtNV90DnyUWgsLFWY4E9J7HIGsaLY>.



The AVMSD and the accessibility of audiovisual media services (Article 7)	In line with the AVMSD	References
	<p>Article 6 (4) was amended to include obligations for Broadcasters who also broadcast children’s films. They are now also obliged to ensure accessibility during the day of at least one film with a translation in sign language or with Armenian subtitles, at the hours established by the regulatory government body and in accordance with the minimum technical requirements.</p> <p>Additional requirements regarding accessibility are included in Article 22 (4).</p> <p>Subtitles in Armenian or sign language translation should be added to: at least one programme per week of an educational, health, cultural and entertainment nature; also to live broadcast of events organised on holidays and memorial days of the Republic of Armenia; and to live speeches, messages and pre-scheduled interviews of the Prime Minister, Chairman of the National Assembly, President of the Republic etc.; and in social advertising</p>	
Reporting to the NRA and developing action plans in this area; these should be communicated to the NRAs.	No specific regulations and obligations are defined in the Armenian legislation.	
States should provide a public online point of contact for providing information and receiving complaints.	No –no such regulation is provided by the law. The Code for Administrative Proceedings which contains regulations on the submission of applications and complaints.	
Emergency information should be in accessible formats.	<p>Yes – aligned with the AVMSD 2018</p> <p>Amendments from October 2022 included a requirement to provide subtitles or sign language translation for special issues broadcast during state of emergency and martial law.</p>	Article 22, new paragraph 4

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

Regarding the provision of accessible audiovisual content for people with disabilities, the obligations are quite limited. They rather reflect the 2010 AVMS Directive with the requirement to “encourage” audiovisual media services to provide accessible content, with no particular obligations. The Law on Audiovisual Media places obligations on broadcasters that broadcast children’s and/or news audiovisual programmes as outlined in the table above. However, amendments introduced in October 2022 expanded the programming requirements and also introduced a provision regarding accessibility of emergency information.



In September 2020, a Government decree announced a broad annual programme for the social inclusion of persons with disabilities for 2021.¹⁰² Section 2.4 dealt with television programmes and the need to provide sign language translation in Armenian within these programmes. The strategy was to reach agreements with the broadcasters and the NRA on this issue. This action plan towards ensuring accessibility of information for people with disabilities does not place specific obligations on the private broadcasters and the NRA to fulfil this action plan; rather, it is more voluntary in character.

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

The 2018 AVMS Directive emphasises (recital 15) that “[t]ransparency of media ownership is directly linked to freedom of expression, a cornerstone of democratic systems”. The AVMS Directive requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). This section outlines the legislative framework regarding transparency of ownership.

Table 41. Transparency of media ownership

AVMSD and transparency of media ownership (Article 5, Article 2)	In line with AVMSD	References
Requirement for a service 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.	Partly aligned with the 2018 AVMSD The press sector has to do this, but the broadcasting sector must provide this information to the CTR only.	Law on Mass Media, Article 11
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers.	Although there is no legal requirement, the CTR maintains an up-to-date list of the national AVMS providers.	
Other national legislation/regulations/rules regarding transparency of media ownership.	Yes - aligned with the 2018 AVMSD Broadcasters and operators are obliged to ensure the transparency of their financing sources, publish their annual financial statements and information on their annual income, as well as publishing information on the founders and participants.	Law on Audiovisual Media, Article 19 (2)
Other national legislation/regulations/rules	This requires all companies (including media) to submit beneficial ownership declarations to the State Registry according to a set timetable.	Law on State Registration of Legal

¹⁰² Government decree # N1601-L dated 29 September 2020: <https://www.arlis.am/DocumentView.aspx?docID=146444>.



regarding the transparency of media ownership.		Entities and Individual Entrepreneurs 2021
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Source: Response of national expert of Armenia to European Audiovisual Observatory standardised survey

The Armenian legal framework only requires the press sector to make public details regarding a service provider's name, the address at which it is established and its email address or website, etc. Broadcasters have to share this information with the NRA. In addition, broadcasters are required to ensure the transparency of their financing sources, publish their annual financial statements, and (regarding ownership) publish information on the founders and participants. In this sense, the transparency of ownership requirements are stronger than those outlined in the AVMS Directive.

The current Law on Mass Media reflects amendments made in 2021 following 2019 recommendations from Council of Europe experts that new requirements to guarantee full ownership transparency, as well as to avoid excessive concentration and anti-pluralistic behaviour in the media sector in general should be established.¹⁰³ The legislative amendments of 2021 to the Law on Mass Media aimed to address the urgent need for media transparency in Armenia. The law (under Article 12) laid down the possible and eligible sources of media funding (paragraph 1) and extended the rules on transparency on mass media revenues to online media outlets, also introducing more detailed financial reporting requirements to provide information on the financial sources of the media outlet (paragraph 2).

In addition, further legislation¹⁰⁴ was introduced requiring all companies (including media) to submit beneficial ownership¹⁰⁵ declarations to the State Registry according to a set timetable. These amendments could ensure the necessary legal framework for media transparency and accountability, but the new rules need to be implemented and enforced in order to bring about meaningful transparency in the media sector. The feedback from the national expert stressed that there may be some challenges to the implementation of this. These include a combination of uncertainty on the part of the media sector who fear that the initiative, if not used correctly, could be used as an instrument to pressure the media and a lack of capacity within the state system to deal with the registers. It would be advisable to give CSOs the possibility to use the data to assess the pluralism of ownership in the market.

With regard to media pluralism, Article 4 of the Mass Media Law ensures a general principle of pluralism in the media. It states that the media and journalists shall operate freely in compliance with the principles of equality, legitimacy, freedom of speech (expression) and pluralism. Article 22 of the Law on Audiovisual Media ensures that public broadcasters shall be guided by the principles of objectivity, democracy, impartiality,

¹⁰³ See the 'Armenian Media Sector Needs Assessment Report – Overview of National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with the Council of Europe standards' by Dr Joan Barata Bjorn Erichsen, Dr Krisztina Rozgonyi and David Sandukhchyan (Jan 2020), p. 33.

¹⁰⁴ Law on State Registration of Legal Entities and Individual Entrepreneurs 2021.

¹⁰⁵ Beneficial ownership is defined as 20% of ownership.



diversity and pluralism and that they shall ensure freedom of expression, conscience, thought, belief and creation. However, this concept is not applied to private broadcasters.

4.2.3. Concluding remarks and summary of findings

The Armenian legislation was updated in 2020. The Law on Audiovisual Media (2020) is partially aligned with the AVMS Directive and, in addition, the law has been the subject of concern from international experts and organisations regarding its alignment with European standards. The Armenian government has moved forward with a working group to develop amendments to the law. Regarding general principles and key values promoted in the Directive, most are clearly outlined in the legislative framework, with rules on transparency of media ownership being particularly strong.

The Constitution, the Law on Audiovisual Media (2020), the Mass Media Law and the Criminal Code are the important sources of provisions dealing with general principles such as freedom of expression, transparency of media ownership and the prohibition of discrimination, incitement to hatred, incitement to violence, incitement to terrorism, and child pornography. The new Criminal Code, in particular, has introduced strong provisions on incitement to hatred.

The legal framework for audiovisual media lacks the incorporation of the concept of jurisdiction and the principle of freedom of reception and retransmission. In addition, a strengthening of obligations regarding the provision of accessibility for people with disabilities would be welcome, but it should be noted that the amendments of October 2022 have improved the obligations regarding accessible content – which indicates some level of progression. The national expert also discussed in detail various issues impeding the exercise of freedom of expression and freedom of the media – which became more problematic in the context of the 2020 Nagorno-Karabakh war and the COVID-19 pandemic. From the discussion in the text, it appears that civil society, the Human Rights Defender of Armenia and several international organisations play an important role in the drive to reform the country's media legislation. As noted above, the government has been working on amendments to the law, partly in response to the comments and reports emanating from these organisations. On 6 June 2022 the Ministry of High-Tech Industry officially circulated a new draft of the amendments to the Audiovisual Law; this was perceived as controversial by the local journalism organisations. They disseminated an announcement criticising this new legal initiative of the government and demanded that it be withdrawn.¹⁰⁶

¹⁰⁶ Text of the draft amendments: https://www.e-draft.am/projects/4418/about?fbclid=IwAR2vvi3Cptl8X_g-V1cNtKBGICHN_5JdYx2U5a8ThyE5fBRA-C3EO9EX12M. Text of the statement from journalism organisations: <https://khosq.am/2022/06/20/%d5%b0%d5%a1%d5%b5%d5%bf%d5%a1%d6%80%d5%a1%d6%80%d5%b8%d6%82%d5%a9%d5%b5%d5%b8%d6%82%d5%b6-98/>.



4.2.4. The list¹⁰⁷ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024. List of relevant documents, reports, opinions, etc.

Table 42. Relevant documents, reports and opinions

Title	Main topics/ themes	Link if available
Council of Europe (2022): <i>Armenian Media Sector Needs Assessment Report – 2022 Update, Overview of the National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with Council of Europe Standards</i>	Media Freedom, Freedom of Expression, Public Service Media	
PACE Report (2021): <i>The Functioning of Democratic Institutions in Armenia</i>	A broad review of the functioning of democratic institutions from the Parliamentary Assembly of the Council of Europe	In English: https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisaires/2021/20211217-ArmeniaInstitutions-EN.pdf
Freedom of Information Center (December 2021): <i>The Mapping of the Media in Armenia in the Context of the Fight Against Dis/Misinformation</i>	Dis/misinformation	In English: http://www.foi.am/en/research/item/2184/
OSCE (2020): <i>Legal Analysis of the Law of the Republic of Armenia on Audiovisual Media</i> (Adopted on 16 July 2020). Prepared for the Office of the Representative on Freedom of the Media, by Joan Barata	Opinion on the 2020 Law on Audiovisual Media and its alignment with European standards	In English: https://www.osce.org/files/f/documents/0/a/493522.pdf
Council of Europe (2020): <i>Armenian Media Sector Needs Assessment Report – Overview of National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with the Council of Europe standards</i>	Media Freedom, Freedom of Expression, Public Service Media	

¹⁰⁷ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



Title	Main topics/ themes	Link if available
Report prepared by Dr Joan Barata, Bjorn Erichsen, Dr Krisztina Rozgonyi and David Sandukhchyan		

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

4.2.5. Data compilation

This country report is based on information and materials supplied by the national expert Shushan Doydoyan, founder and director of the Freedom of Information Center of Armenia (FOICA).



4.3. Bosnia and Herzegovina (BA)¹⁰⁸ (Country report A¹⁰⁹)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- Bosnia and Herzegovina fully aligned the legislative framework with the Audiovisual Media Services (AVMS) Directive (2010/13/EU), largely via secondary legislation.
- The alignment with the AVMS Directive (2010/13/EU), as amended by Directive (2018/1808/EU) is moving forward with the development of a range of draft by-laws and codes, which were made available for public consultation on 23 September 2022. On 24 February 2023, the Council of the Communication Regulatory Agency (CRA/KRA) adopted three of the four relevant bylaws. The final Rule on the Provision of Audiovisual Media Services was adopted by the Council on 18 May 2023.
- The general principles and key values are covered in the legislative framework – but the rules on transparency of media ownership are rather flexible.
- The CRA plays an important role in the implementation of the EU *acquis* and in developing policies in areas such as media literacy.

¹⁰⁸ The country report on Bosnia and Herzegovina incorporates the feedback received from Maida Ćulahović, Head of Complaints and Analyses Department at the Communication Regulatory Agency (RAK), during the checking round with the national regulatory authorities.

¹⁰⁹ Country report A outlines the findings of Questionnaire A in relation to Group I, which includes Bosnia and Herzegovina.



- The list¹¹⁰ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.3.1. Introduction

Bosnia and Herzegovina (BA) has participated in the Creative Europe programme since 2014. In the context of this research, Bosnia and Herzegovina 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 legislation to the AVMS Directive 2010/13/EU, as amended by AVMS Directive (EU) 2018/1808 (hereinafter referred to as the AVMS Directive or AVMSD). In order to continue to participate in the programme beyond 31 December 2022 they needed to fulfil the conditions set out in the AVMS Directive.

In the context of EU accession, Bosnia and Herzegovina is a candidate country since December 2022. Following the entry into force of the Stabilisation and Association Agreement (SAA) between the EU and Bosnia and Herzegovina in 2015,¹¹¹ the country applied for EU membership in February 2016. In its opinion on the EU membership application, adopted in May 2019, the Commission set out 14 key priorities for the opening of EU accession negotiations. In December 2023 the European Council decided that it will open accession negotiations with Bosnia and Herzegovina, once the necessary degree of compliance with the membership criteria is achieved. It invited the Commission to report to the Council on progress at the latest in March 2024, with a view to making a decision.

The Constitution of Bosnia and Herzegovina (Annex IV of the Dayton Peace Agreement) sets out the internal structure of Bosnia and Herzegovina as a state consisting of two entities, the *Republika Srpska* and the Federation of Bosnia and Herzegovina - the latter composed of 10 cantons - as well as the Brčko District. At state level, legislative power is vested in the BA Parliamentary Assembly (House of Representative and House of Peoples) and executive power in the tripartite, directly elected Presidency and in the Council of Ministers. Entities and cantons have each their own government and assembly, entrusted with wide legislative competences. The Dayton Peace Agreement (Annex X) also established the Office of the High Representative (OHR), which since December 1997 is granted extensive executive powers to impose legislation and to remove obstructive officials ("Bonn Powers").¹¹²

¹¹⁰ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

¹¹¹ Stabilisation and Association Agreement with Bosnia and Herzegovina: <https://eur-lex.europa.eu/EN/legal-content/summary/stabilisation-and-association-agreement-with-bosnia-and-herzegovina.html>

¹¹² European Commission, Analytical report on Bosnia and Herzegovina, SWD(2019)222, May 2019 <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-analytical-report.pdf>.



The latest general elections took place in October 2022 and a new Council of Ministers took office in January 2023.

4.3.1.1. Relevant legal framework: current status and developments

The table below outlines the relevant legislative framework for the audiovisual media sector. This country report does not outline the 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 authority (the 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 (ACCs) and video-sharing platforms (VSPs).

The legislative framework of Bosnia and Herzegovina includes a broad range of secondary acts, and only those directly relevant to the issues addressed in this country report are included below.



Table 43. Legal framework

Title	Status	Relevance	Link
<i>Ustav Bosne i Hercegovine</i> Constitution of Bosnia and Herzegovina	Adopted 1995 at Annex 4 to the DPA	Covering (among others) fundamental rights and freedoms	In Bosnian https://www.ustavnisud.ba/public/download/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf In English: https://www.parlament.ba/data/dokumenti/pdf/vazniji-propisi/Ustav_BA_-_E.pdf
<i>Zakon o komunikacijama</i> Law on Communications, 2002 (amended in 2006, 2010 and 2012)	Adopted 2002, last amended 2012	Current law in force on communications (telecoms, radio, broadcasting, including cable television and associated services and facilities) and establishing the Communications Regulatory Agency	In Bosnian: https://docs.rak.ba/articles/8ed64927-655f-4461-8940-722ef312c3c7.pdf In English: http://www.ohr.int/laws-of-BA/public-information/
<i>Krivični Zakon Bosne i Hercegovine</i> Criminal Code of Bosnia and Herzegovina (2003), last amended 2021	In force	Criminal offences such as incitement to hatred	In Bosnian https://www.paragraf.ba/propisi/BA/krivicni-zakon-bosne-i-hercegovine.html In English https://rm.coe.int/BA-criminal-code-consolidated-text/16806415c8
<i>Zakon o Zabrani Diskriminacije</i> Law on Prohibition of Discrimination (2009, amended 2016)			In English https://arsbih.gov.ba/wp-content/uploads/2014/02/002-Anti-Discrimination-Law-.pdf



			In Bosnian https://advokat-prnjavorac.com/zakoni/Zakon-o-zabrani-diskriminacije-u-BiH.pdf
Secondary legislation: by-laws, codes, etc. in force			
<i>Kodeks o audiovizuelnim medijskim uslugama i medijskim uslugama radija 2015</i> Code on audiovisual media services and radio media services, 2015	Adopted 2015	Basic principles of programme content (Replaced by the Code on Programme Content 2023, see below)	In Bosnian: https://docs.rak.ba/articles/333eb24f-ca18-4ef2-a9ab-8f402e8a4f40.pdf In English: https://rak.ba/en/articles/108
<i>Kodeks o programskim sadržajima 2023</i> Code on programme content, 2023	Adopted 2023	Aligning with the 2018 AVMSD regarding issues of harmful and illegal content and hate speech	In Bosnian: https://docs.rak.ba/articles/436feb44-66bf-4ad7-bfc7-6d6b9e6232f7.pdf In English: N/A https://docs.rak.ba/articles/3cafb926-4263-498a-8207-6f3ecbe25abe.pdf
<i>Kodeks o komercijalnim komunikacijama 2023</i> Code on commercial communications, 2023	Adopted 2023	Aligns with the 2010 AVMSD (as amended by the 2018 AVMSD) regarding audiovisual commercial communications (ACC)	In Bosnian: https://docs.rak.ba/articles/9dde52cf-3b8a-4a71-a310-d996f4415b97.pdf In English: N/A https://docs.rak.ba/articles/77863b5e-85b2-410e-bff5-5b97b6c10bc2.pdf



<p><i>Pravilo o pružanju usluga platformi za razmjenu videozapisa 2022</i></p> <p>Rule on provision of video-sharing platform services, 2023</p>	Adopted 2023	Aligning with the 2018 AVMSD regarding VSPs	In Bosnian: https://docs.rak.ba/articles/535e5740-e95f-4c8a-b72c-23c62c269f28.pdf In English: https://docs.rak.ba/articles/5370e55e-9aef-498a-9150-46c155f05190.pdf
<p><i>Pravilo 95/2023 o dozvolama za distribuciju audiovizuelnih medijskih usluga i medijskih usluga radija 2023</i></p> <p>Rule on the provision of audiovisual media services, 2022</p>	Adopted 2023 (Replaced former 2015 Rule)	Deals with (<i>inter alia</i>) rights and obligations of providers of audiovisual media service providers. Aligning with the 2018 AVMSD regarding definitions, media register, accessibility, etc.	In Bosnian: https://docs.rak.ba/articles/f88bfe17-dec3-4431-ae5-8e2d670f2bca.pdf In English: https://docs.rak.ba/articles/a345fba7-302f-42e7-82b2-0ebbc4f0fbbe.pdf
<p><i>Pravilo 79/2016 o dozvolama za distribuciju audiovizuelnih medijskih usluga i medijskih usluga radija 2016</i></p> <p>Rule on Licences for the Distribution of Audiovisual Media Services and Radio Media Services, 2016</p>	Adopted 2015	Covers freedom of reception and retransmission, and derogations	In Bosnian: https://docs.rak.ba/articles/7b321574-318e-48e5-8311-c352b1265e58.pdf In English: https://rak.ba/en/articles/113
<p><i>Instrukcija o načinu izvještavanja o udjelu evropskih djela i evropskih djela nezavisnih producenata u programskim sadržajima 2015</i></p> <p>Instruction on reporting on the share of European works and European works of independent producers in the programme content, 2015</p>	Adopted 2015	Covers rules on reporting on European works	In Bosnian: https://docs.rak.ba/articles/9b3cd6a5-6595-4c70-8106-7648280fcc62.pdf



<i>Odluka o određivanju tijela nadležnog za saradnju sa regulatornim tijelima iz oblasti audiovizuelnih medijskih usluga i određivanju nadležnog tijela za utvrđivanje liste važnih događaja za emitiranje u Bosni i Hercegovini 2013</i> Decision on designation of the authority in charge of cooperation with regulatory bodies in the field of audiovisual media services and designation of the competent body for determining the list of major events in Bosnia and Herzegovina, 2013	Adopted 2013	Relevant to the role of the NRA in cooperation with other NRAs	N/A
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Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The Law on Communications was last amended in 2012. The working group tasked to update the law last met in 2020; it comprised of representatives of the Ministry of Communications and Transport, the Communications Regulatory Agency (CRA) and the Directorate for European Integration. The group produced a draft of a new Law on Electronic Media and Electronic Communications. It was later decided by the Government to proceed with two separate laws: a Law on Electronic Communications and a Law on Electronic Media, and new working groups were established. The CRA has submitted its proposal for the new Law on Electronic Media, which includes the partial alignment with the 2018 AVMS Directive. However, due to the political blockade in 2021-2022, the entire process remained at a standstill the new law was not adopted by the end of the legislature. Hence, alignment will be achieved by means of CRA by-laws (as was the case with the 2010 AVMS Directive). The CRA has prepared the relevant drafts (as indicated in the table above). The drafts were published for public consultation between 23 September and 6 November 2022. On 24 February 2023, the CRA Council adopted three of the four relevant codes: the Code on Programme Content (which replaces the Code on audiovisual media services and radio services of 2015), the Code on Commercial Communications, and the Rule on provision of video-sharing platforms. The final Rule on the Provision of Audiovisual Media Services was adopted by the Council on 18 May 2023.

4.3.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant definitions with the 2018 AVMS Directive.



Table 44. Definitions

Definitions (Article 1 AVMSD)	In line with the AVMSD	References
Audiovisual media service	Yes – aligned with the 2018 AVMSD.	Article 2b – Rule on provision of audiovisual media services 2023
Video-sharing platform (VSP) service	Yes – aligned with the 2018 AVMSD.	Article 2b – Rule on provision of video-sharing platform services, 2023
Programme	Yes – aligned with the 2018 AVMSD.	Article 2d – Rule on provision of audiovisual media services 2023
User-generated video	Yes – aligned with the 2018 AVMSD.	Article 2d – Rule on provision of video-sharing platform services, 2023
Editorial decision	Yes – aligned with the 2018 AVMSD.	Article 2z – Rule on provision of audiovisual media services, 2023
Editorial responsibility	Yes – aligned with the 2018 AVMSD	Article 2v – Rule on provision of audiovisual media services 2023
Media service provider	Yes – aligned with the 2018 AVMSD (defines audiovisual media service provider)	As above, Article 2f
VSP provider	Yes – aligned with the 2018 AVMSD	Article 2c – Rule on provision of video-sharing platform services, 2023
Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD	Article 2e – Rule on provision of audiovisual media services 2023
Broadcaster	Yes – aligned with the 2018 AVMSD (defines broadcasting service)	As above, Article 2bb
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD	As above, Article 2c
Audiovisual commercial communication (ACC)	Yes – aligned with the 2018 AVMSD	Article 2 – Code on commercial communications, 2023
Television advertising	Yes – aligned with the 2018 AVMSD	Article 2 – Code on commercial communications, 2023
Surreptitious ACC	Yes – aligned with the 2018 AVMSD	As above, Article 2
Sponsorship	Yes – aligned with the 2018 AVMSD	Article 2 – Code on commercial communications, 2023



Definitions (Article 1 AVMSD)	In line with the AVMSD	References
Teleshopping	Yes – aligned with the 2018 AVMSD	Article 2 – Code on commercial communications, 2023
Product placement	Yes – aligned with the 2018 AVMSD	Article 2 – Code on commercial communications, 2023
European works	Yes – aligned with the 2018 AVMSD	Article 14(1-3) – Rule on provision of audiovisual media services 2023
Independent producer	Yes – aligned with the 2018 AVMSD	Article 15(1) – Rule on provision of audiovisual media services 2023
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	There are no definitions but Article 9 (Violence and Other Harmful Behaviour) of the relevant code has provisions on such content.	Article 9 – Code on programme content, 2023
Definition of incitement to hatred (or equivalent)	There are no definitions but Article 5 (Hate Speech) of the relevant code has provisions on the prohibition of hate speech.	Article 5 – Code on programme content, 2023

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

Following the adoption of the four secondary legislative acts – i.e., codes and rules, in March and May 2023, the regulatory framework is now completely aligned with the definitions in the 2010 AVMS Directive as revised by the 2018 AVMS Directive. The codes have also updated definitions regarding audiovisual commercial communications, with the necessary references to user-generated content, and to VSPs.

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

The legislative framework, outlined below, aligns with the AVMS Directive in relation to the establishment of jurisdiction, and the draft legislation includes verbatim the relevant provisions in relation to the jurisdiction of video-sharing platforms.

Table 45. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers.	Yes – aligned in current by-law.	Article 4 – Rule on provision of audiovisual media services 2023



Article 2 (5a) - Requirement that media service providers inform the competent national regulatory authorities or bodies about any changes that may affect the determination of jurisdiction.	Yes – as part of reporting requirements to the NRA.	Article 21(7) – Rule on provision of audiovisual media services, 2023
Article 2 (5b) - Requirement that an up-to-date list of the AVMS providers under national jurisdiction be maintained.	The NRA currently provides an up-to-date list. A requirement to do this is included in new draft rules.	Article 21(6) – Draft Rule on provision of audiovisual media services, 2023
Article 28a (paragraphs 1-5) - regarding the establishment of the jurisdiction of VSPs.	Yes – aligned in the Rule.	Article 4 – Rule on provision of video-sharing platform services, 2023
Article 28a (paragraph 6) - Requirement that an up-to-date list of the VSP providers established or deemed to be established on their territory be maintained.	Yes – aligned in the Rule.	Article 5 (6) – Rule on provision of video-sharing platform services, 2023
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing an opinion on jurisdiction.	Not mentioned but BA is an observer rather than a member of the ERGA.	

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The legislation also enshrines the principle of freedom of reception and retransmission for AVMS aligned with both the AVMS Directive and the European Convention on Transfrontier Television (ECTT). This is included in regulations on licensing. Derogations are referred to in the same rule with reference to general principles. These derogations are not very detailed – reference is made to “cases provided for by relevant international legal instruments”.

**Table 46. 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 principle is detailed under general principles of the relevant rules. Refers also to freedom of transmission and reception of services from states party to the ECTT.	Article 3 – Rule on Licences for the Distribution of Audiovisual Media Services and Radio Media Services
Article 3(2-5) – derogations from the principle of freedom of reception and transmission	General principles: make reference to violation of relevant laws and regulations – and also to “cases provided for by relevant international legal instruments”.	Article 3 – Rule on Licences for the Distribution of Audiovisual Media Services and Radio Media Services

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

No specific issues were raised by the expert in relation to the above. However, it should be noted that non-EU countries are not part of the structures of cooperation within the ERGA, being observers rather than members (as is the case of Bosnia and Herzegovina). Hence, they do not play a role in the procedures regarding opinions on the establishment of jurisdiction and opinions on issues of derogation.

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

Regarding 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 those that are not dealt with in more detail in later sections.

Table 47. General principles and key values

General principle/key value	Relevant provision/provisions	References
Principle of non-discrimination	This is covered in constitutional, media law and in detail in the Law on Prohibition of Discrimination. *** The grounds for non-discrimination include: <i>persons or groups based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or any other consequence with the purpose of</i>	Law on Prohibition of Discrimination (2009, amended 2016) *** Article 4 of the Constitution of



General principle/key value	Relevant provision/provisions	References
	<p><i>preventing or jeopardising recognition, enjoyment or exercise of any person's rights and freedoms on an equal basis...</i></p> <p>***</p> <p>Non-discrimination addressed in relation to hate speech in the Code on programme content</p> <p>***</p> <p>The Criminal Code also prohibits discrimination under Article 145.</p>	<p>Bosnia and Herzegovina.</p> <p>***</p> <p>Article 4 – Law on Communications</p> <p>***</p> <p>Code on programme content, 2023, Article 5</p> <p>***</p> <p>Article 145 Infringement of the Equality of Individuals and Citizens – Criminal Code</p>
<p>Prohibition of incitement to hatred and incitement to violence</p>	<p>The criminal Code prohibits incitement to hatred</p> <p>***</p> <p>Article 5 (1) prohibits humiliating, intimidating or inciting to hatred, violence or discrimination against persons or groups (as defined in the Constitution – see above).</p> <p>Article 5 (2) states that AVMS and radio media services shall not create a clear and immediate risk of inciting hatred, violence or discrimination, or include anything which could be interpreted as incitement of hatred, violence and disorder by the audience, or which could cause or incite criminal acts.</p>	<p>Criminal Code, Article 145a</p> <p>Provoking ethnic, racial and religious hatred, conflicts and intolerance</p> <p>***</p> <p>Article 5 – Code on programme content, 2023</p>
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism</p>	<p>The Criminal Code prohibits incitement to terrorism (Article 202a), and as noted above it prohibits encouraging to hatred, racism and xenophobia (Article 145a)</p> <p>***</p> <p>Article 4 of the Code prohibits content which carries a clear and immediate risk of causing negative consequences which include, but are not limited to death, injury, property damage or other types of violence, or obstruction of police activities, medical services or activities of other services related to maintenance of public order and security.</p> <p>Article 6 prohibits the glorification, justification or incitement to committing an act of terrorism.</p>	<p>Criminal Code</p> <p>Article 202a - Encouraging Terrorist Activities in Public</p> <p>Article 145a - Provoking ethnic, racial and religious hatred, conflicts and intolerance</p> <p>***</p> <p>Article 4 – Code on programme content, 2023</p>



General principle/key value	Relevant provision/provisions	References
		Code on programme content, 2023, Article 6

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

As outlined above, each of these first three principles: non-discrimination, prohibition of incitement to hatred and violence, and prohibition of criminal content, and the prohibition on incitement to terrorism are covered in the legislative framework. A specific Law on the Prohibition of Discrimination was adopted in 2009 and amended in 2016. The constitutional requirements on non-discrimination are adopted in the codes that regulate AVMS. In addition, incitement to hatred or violence is also included in these codes.

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

The table below indicates the relevant legal framework for the protection of the freedom of expression, which is enshrined in the Constitution of Bosnia and Herzegovina, included as a regulatory principle in the Law on Communications, and also as a general programme principle in the Code on Audiovisual media and Radio Media Services.

Table 48. Freedom of expression

General principle/key value	Relevant provision/provisions	References
Freedom of expression	The Constitution states that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols apply directly in Bosnia and Herzegovina and have priority over all other law (Article II, paragraph 2). This includes the fundamental right to freedom of expression (Article II, paragraph 3h).	Constitution of Bosnia and Herzegovina Article II, paragraph 2 International standards paragraph 3 Enumeration of rights
Freedom of expression	Article 4 of the Law on Communications states that one regulatory principle of broadcasting shall include the protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality.	Law on Communications, 2002, Article 4 (1) Regulatory Principles of Broadcasting and Telecommunications
Freedom of expression	The duty for AVMS to respect human dignity and the fundamental rights of others, and to encourage the	Code on Programme Content, 2023, Article 4



	free formation of opinions is reiterated in the relevant code for audiovisual media.	
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Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The right to freedom of expression is clearly enshrined in the legislative framework, but there are problems with the implementation of the legal provisions. The European Commission 2022 report on Bosnia and Herzegovina¹¹³ expressed concern regarding the legislative framework and the need for it to be aligned with European and international standards and fully enforced. Reasons for this included concern regarding political influence over public broadcasters, and the lack of financial sustainability for public service broadcasters. The situation regarding journalists was also highlighted regarding political pressure, intimidation and harassment towards journalists, including physical and verbal attacks that do not receive appropriate institutional follow-up. The report concluded that the key problems to be addressed included: ensuring the protection of journalists and a systematic follow-up on threats against them; ensuring the financial sustainability and independence of public broadcasters; adopting legislation on media ownership; and adopting criteria on public advertising.

The national expert also drew attention to the 2021 Vibrant Information Barometer produced by IREX¹¹⁴ which emphasised the difficult position of journalists claiming that although there are legal protections in place regarding freedom of speech and information, the implementation is inadequate leading journalists to frequently self-censor out of fear. They claim that the government does not openly censor the media but that during the COVID-19 pandemic, there were attempts to restrict freedom of expression.

Regarding the difficulties faced by journalists, the *BH Novinari* journalists' association recorded 70 cases of journalists' rights being violated in 2021 (69 in 2020, 56 in 2019)¹¹⁵, including physical attacks, online and in-person threats, smear campaigns, mobbing and hate speech. In most cases, the prosecutors' offices and police did not find the perpetrators, and the courts did not process them. Research from *BH Novinari* pointed to the precarious situation of journalists working in local newsrooms – in the years 2017-2020, 40% of journalists interviewed in the study (157 overall) said they had been exposed to attacks and threats, and 75% had been placed under pressure by government officials, the opposition, and advertisers.¹¹⁶ A United Nations report from 2022 indicated ongoing issues in the area of freedom and safety of journalists.¹¹⁷

¹¹³ European Commission: Bosnia and Herzegovina Report 2022, SWD(2022)336. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Bosnia%20and%20Herzegovina%20Report%202022.pdf>

¹¹⁴ IREX Vibrant Information Barometer 2021 – Bosnia and Herzegovina: <https://www.irex.org/sites/default/files/pdf/vibe-bosnia-herzegovina-2021.pdf>.

¹¹⁵ European Commission: Bosnia and Herzegovina Report 2022, SWD(2022)336

¹¹⁶ Western Balkans Journalists' Safety Index – Bosnia and Herzegovina 2020 Narrative Report: <https://bhnovinari.ba/wp-content/uploads/2021/12/BA-ENG.pdf>.

¹¹⁷ UN (2022): The Right to Freedom of Opinion and Expression - The safety of journalists and access to information in Bosnia and Herzegovina. Report developed in the framework of the OHCHR-UNESCO Global Drive project.



One issue addressed in the questionnaire was whether there were any concerns regarding laws and regulations intended to regulate the media, which could lead to censorship, for example, laws aiming to regulate the Internet, online news portals or online publications. Online news portals are subject to self-regulation implemented by the Press and Online Media Council. However, according to the European Commission's 2022 Report on Bosnia and Herzegovina, self-regulation of online media has limited effect with many platforms being used to spread hate speech and defamation.

In order to tackle some of the challenges posed by the current lack of rules on harmful online content, in 2021 the CRA Council approved draft amendments to the CRA rules governing the provision of audiovisual and radio media services, with a view to extending the licensees' editorial responsibility to their online content. More specifically, it is proposed that all content published on broadcasters' official websites or websites marked with their logo be subject to the same basic tier of rules as the broadcast content, in terms of incitement to violence, hatred and discrimination, prejudice to public health and safety, the protection of minors and their privacy, as well as the right of reply. If adopted, the scope of regulation will effectively be expanded to include the prevention of harmful content in media service providers' online activities. The Council decided in 2022 to drop the proposals on the grounds that a broader approach will be needed that should involve a wider stakeholder cooperation in order to deal with online media. A report commissioned by the CRA under the JUFREX Project covers online problematics, maps relevant local players, and assess their capacities and readiness to take on joint responsibility, and provides recommendations for the establishment and functioning of a cooperation platform to tackle harmful online content.¹¹⁸

On 1 November 2022, the president of Republika Srpska (RS) Milorad Dodik, proposed the adoption of amendments to re-criminalise defamation in the Criminal Code of the RS. Civil society and journalism associations strongly condemned the proposal, which would threaten media freedom as is not in line with international human rights standards, and the practice of the European Court of Human Rights.¹¹⁹ These amendments were adopted at the first reading by the RS National Assembly on 23 March 2023.

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

The first national regulatory authority (NRA) was the Independent Media Commission (IMC) established by the Office of the High Representative (OHR) in 1998. In 2001, the OHR decided to merge the IMC and the Telecommunications Regulatory Agency into the Communications Regulatory Agency of Bosnia and Herzegovina (CRA). Hence the CRA is a converged regulatory body in charge of both the broadcasting and telecommunications sectors.

¹¹⁸ Not published as of 20 June 2023.

¹¹⁹ See for example, South East European Network for the Professionalisation of the Media (SEENPM): <https://seenpm.org/dodiks-proposed-laws-whoever-says-a-word-goes-to-jail/>



Table 49. Independence of the National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government.	Yes – this is aligned with the 2018 AVMSD in the current law.	Article 36, Law on Communications, 2002
NRAs should exercise their powers impartially and transparently.	Yes – this is aligned with the 2018 AVMSD in the current law.	Article 36, Law on Communications
Clear definition of the competences and powers of the NRAs outlined in the law.	Yes – this is aligned with the 2018 AVMSD in the current law. The responsibilities and also the duties of the CRA are outlined.	Articles 3 and 37, Law on Communications
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions; they should also have their own budgets.	Yes – this is partially aligned with the 2018 AVMSD in the current law. The budget is linked to the state budget (see discussion below).	Article 43, Law on Communications Article 44, Law on Communications
Clear conditions and (transparent and non-discriminatory) procedures for the appointment and dismissal of the heads of NRAs/members of governing bodies are laid out in the law.	Yes – this is aligned with the 2018 AVMSD For the Council of the CRA – the selection of candidates is made by a Parliamentary Commission. The Council of Ministers selects the final members and the Parliamentary Assembly votes on whether to accept this list. For the Director, the Council of the Agency runs a public competition and the Council of Ministers must approve the final decision. Regarding dismissal procedures: for the Council of the CRA it is only the Parliamentary Assembly which does this; for the Director, it is the Council of Ministers. A list of the usual grounds for dismissal are provided, such as: illness, conviction of a crime, conflict of interest, resignation, non-performance of duties, violation of the Agency’s Code of Ethics.	Articles 39, 40, and 42, Law on Communications
Existence of effective and independent appeal mechanisms.	Yes – this is aligned with the 2018 AVMSD including appeals to the Council of the CRA (administrative procedure) – and the possibility for legal review before the State Court.	Article 47, Law on Communications
Provisions in the law that support cooperation between NRAs.	Yes – this is aligned with the 2018 AVMSD The CRA is designated as responsible for cooperation with NRAs in the field of AVMS of the member states of the EU.	“Decision on the appointment of the body responsible for cooperation with regulatory authorities in the field of audiovisual media



		services and the body responsible for determining the list of major events in Bosnia and Herzegovina”, 2013
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Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The provisions of the AVMS Directive covering the principle of independence of the national regulatory authority have been enshrined in the legislative framework (Law on Communications) for many years. As can be seen in the table above, these align with the requirements of the 2018 AVMS Directive.

Regarding financial independence, the CRA is a self-financed body (from licence fees), but its budget is part of the state budget and according to the information provided in the European Audiovisual Observatory’s survey, this can cause problems as the CRA does not have direct control over its funds. Where the state budget is not adopted on time, the funding for the CRA directly depends on decisions on the temporary financing of state institutions. Since 6 June 2022, following a decision of the OHR, such temporary financing is automatic. This should therefore mitigate the former problems related to late adoption of the state budget.

In addition, although the legal framework tasked the CRA with establishing compensation schemes for its employees, this was revoked in 2008 by a separate Law on Salaries and Compensations in Institutions of Bosnia and Herzegovina.

A 2019 report by the European Audiovisual Observatory on the independence of national regulatory authorities covered Bosnia and Herzegovina as a case study. Appointment procedures for the CRA Council and Director General were criticised as being non-transparent and inefficient, open to political pressures and carrying a risk of exposing the CRA to undue influence from the Council of Ministers and the Parliamentary Assembly:

The Law provides for the possibility of an indefinite repetition of the procedure for the appointment of the CRA Council until political agreement is reached within and between the Parliament and the Council of Ministers.¹²⁰

In relation to political independence, the 2021 European Commission report¹²¹ stated that the CRA still lacked full political and financial independence and that the procedure to appoint the CRA management should be revised in order to improve its public perception as a neutral and independent body. The report noted that the former head of Republika Srpska’s public television (RTRS), had been appointed as the new CRA director in July 2020; “the CRA had sanctioned RTRS multiple times during his mandate for non-respect of editorial standards, including for historical revisionist statements as regards the May 1995

¹²⁰ Cappello M. (ed.), *The independence of media regulatory authorities in Europe*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2019: <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

¹²¹ European Commission: Bosnia and Herzegovina Report 2021: <https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-10/Bosnia%20and%20Herzegovina%202021%20report.PDF>.



massacre in Tuzla.” Since the new Director General was appointed, according to CRA reports on violations and sanctions, RTRS has not been sanctioned again, although independent analysts agree that its reporting and editorial policy have remained the same.

The 2022 European Commission report reiterated the concerns that the CRA still lacks full political and financial independence.

4.3.2.3. The protection of minors

Here 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.

Table 50. Protection of minors

AVMSD and protection of minors	In line with AVMSD	References
Obligations to protect minors from harmful content, via a watershed/scheduling, age verification tools or other technical measures	Yes – this is aligned with the 2018 AVMSD. Rules related to the protection of minors include a watershed/scheduling, content categorisation and technical protection, reporting on minors and rules pertaining to content intended for minors.	Articles 26 of the Code on Programme Content, 2023,
Prohibition against the commercial use of personal data of minors collected when implementing these measures	Yes – the current Code follows the provision in the 2018 AVMSD verbatim.	Code on Programme Content, 2023, Article 25 (3)
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	Yes – the current rules include the requirement for visual and acoustic signals.	Article 26 of the Code on Programme Content, 2023
Bans or prohibitions (or limitations) on certain products: cigarettes, tobacco products, and electronic cigarettes, alcoholic beverages, etc.	Yes – aligned with the 2018 AVMSD in the current code Audiovisual commercial communications (ACC relating to cigarettes and other tobacco products, including electronic cigarettes and refills are prohibited. ACC related to all kinds of alcoholic beverages must not be aimed specifically at minors, and persons appearing in ACCs that are associated with the consumption of alcoholic beverages shall not be or look like minors (Article 6).	Article 6 (1) of the Code on Commercial Communications 2023 Articles 6 and 7 (5) of the Code on Commercial Communications 2023



	There is also a prohibition against broadcasting advertising for a range of products ¹²² including alcoholic beverages and beer, 15 minutes before, during and 15 minutes after a children's programme (Article 7(5)).	
	Showing the consumption of tobacco and tobacco products and alcohol in content primarily intended for minors is prohibited, unless the purpose is to indicate the nature of harm related to these products.	Article 20 of the Code on programme content, 2023
Provisions to effectively reduce the exposure of minors to ACCs for alcoholic beverages	Yes aligned in the current Code, which limits the broadcast of such advertising around children's programmes	Code on Commercial Communications 2023 , Article 7 (5)
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – this is aligned with the AVMSD, in detail in the current Code.	Article 7 of the Code on Commercial Communications 2023.
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Yes aligned in the current Code which limits the broadcast of such advertising around children's programmes.	Code of commercial communications 2023, Article 7 (6)
Prohibition against product placement in children's programmes	Yes – this is aligned with the 2018 AVMSD.	Article 19 of the Code on Commercial Communications

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The Code on Commercial Communications adopted in February 2023 has aligned the area with the 2018 AVMS Directive. The adoption of the Code on Programme Content on the same date also aligned the rules on protection of minors from harmful content.

A recent (2020) review of the codes for the protection of minors noted that AVMS providers face challenges when making editorial decisions on appropriate age labels, including due to a lack of resources, capacity and knowledge. Bosnia and Herzegovina lacks any professional association or body that is responsible for the classification of content.¹²³

Although it still does not have a clear legal remit in this field, the CRA has been actively promoting media and information literacy (MIL) since 2010. The majority of activities in this area have focused on the protection of minors, including various promotional activities (publications, brochures, TV and radio spots, lectures, etc.) with the goal of raising awareness about the protection of children as regards both linear and non-linear services. The CRA has facilitated the formation of an informal MIL network in the

¹²² Alcoholic beverages, beer, medicines, medical treatments, aids and devices, including dietary supplements, medical institutions, means of regulating body weight, ignition devices, inflammable and other hazardous substances, religious messages and games of chance.

¹²³ J.F Furnémont (2020), *Review of the provisions of the Code on audiovisual media services regarding protection of minors*. Study prepared under the JUFREX project: <https://rak.ba/en/brdcst-media-literacy>.



country and is managing a Facebook page as well as the MIL website¹²⁴ which has a special section for children and minors. In October 2021, the first campaign entitled “Days of media and information literacy” was held in cooperation with organisations and institutions active in the field of media and information literacy with the goals of promoting MIL activities, encouraging social debate on the importance of this topic, especially in the field of education, and promoting specific resources that have been developed in this area including various studies and materials for teachers, children and parents.

4.3.2.4. 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 services are made “continuously and progressively more accessible”. This section briefly outlines the extent to which the legislative framework, or draft legislation/rules are addressing the basic requirements of the 2018 AVMS Directive – in respect of these issues. In the case of Bosnia and Herzegovina, the new Rule on the provision of AVMS covers the issue of accessibility.

Table 51. 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.	Yes - aligned with the 2018 AVMSD The Rule introduces progressive obligations on AVMS (10% of programming in first year 2023 – to reach 20% after 5 years).	Article 13 (11 and 12) Rule on provision of audiovisual media services 2023
Media service providers should report on this to the NRAs. Media service providers are encouraged to develop action plans in this area and should communicate these to the NRAs.	Yes - aligned with the 2018 AVMSD Introduces the obligation for annual reporting by broadcasters to the CRA. Broadcasters will also be required to submit to the CRA within six months of entering into force of the Rule, a five-year action plan which, once approved, will become part of licence terms and conditions.	As above, Article 13 (13)
States should provide a public online point of contact for providing information and receiving complaints.	Yes - aligned with the 2018 AVMSD The CRA will create a point of contact available on its website and/or a designated email address.	Article 13 (14)
Emergency information should be in accessible formats.	Yes - aligned with the 2018 AVMSD This will be required under the new rules when adopted.	Article 13 (15)

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

¹²⁴ www.medijskapismenost.ba.



From the information above, it is clear that the Rule on provision of audiovisual media services 2023, adopted by the CRA Council in May 2023, has aligned the regulatory framework with the requirements of the 2018 AVMS Directive. In addition, the CRA cooperates with a local NGO, the ICVA (Initiative and Civil Action)¹²⁵ in implementing a project aimed at improving accessibility to media content and services. As part of this cooperation, guidelines have been produced, and workshops have been held for members of selected disability organisations who will conduct monitoring of the public service broadcaster’s programmes in order to establish to what extent they implement the accessibility obligation. Work in this area is enhanced by the European Union funded project ‘Equal Access for All’. The project is intended to improve the level of accessibility to media content and services for people with disabilities and to improve the legal framework and practices in this segment.¹²⁶

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

The 2018 AVMS Directive emphasises (recital 15) that “[t]ransparency of media ownership is directly linked to freedom of expression, a cornerstone of democratic systems”. The AVMSD requires a minimum of public information about services (Article 5), and national lists of media services (Article 2). The main source of obligations in this area is the Rule on the Provision of audiovisual media services.” As will be outlined in the discussion below, there are no laws that regulate the concentration of domestic and foreign ownership in media and advertising, nor are there any that require transparency in media ownership.

Table 52. Transparency of media ownership

AVMSD and transparency of media ownership	In line with AVMSD	References
Requirement for a service 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 The rule requires the information: name, address of establishment or head office, an email address or website and where the license was granted by the CRA (for both broadcasters and audiovisual on-demand services).	Articles 18 and 36 of the Rule on provision of audiovisual media services, 2023
Possible to also require AVMS providers to make accessible information on their ownership structures.	The Agency requires information on ownership structures under Article 22. But there is no provision allowing the publication of such data due to foreseeable challenges of implementation (see discussion below).	Rule on provision of audiovisual media services, 2023

¹²⁵ <http://icva-bh.org/>.

¹²⁶ Website of NGO Jabiheu: <https://jabiheu.ba/how-to-adapt-media-content-to-the-needs-of-200000-people-with-disabilities-in-bosnia-and-herzegovina/>



Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	Yes - aligned with the 2018 AVMSD The CRA maintains a public registry of services, which contains their name, name of service, type of licence/registration, official address, email address and other contact information. A requirement to maintain the registry is included in the new Rule.	Articles 21 and 33, Rule on provision of audiovisual media services 2023
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Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The regulatory framework requires that basic information regarding the services should be publicly available, and the CRA is required to establish and maintain up-to-date lists of the national AVMS providers. One obstacle related to the transparency of ownership is the fact that the registry currently only includes information on the natural or legal person who has been issued the licence. Detailed information on ownership structure is not being published following a negative opinion on this from the personal data protection authority (PDPA).¹²⁷

As outlined above, there are no laws that regulate the concentration of domestic and foreign ownership in media and advertising, nor are there any that require transparency in media ownership. According to recent research,¹²⁸ 44% of online news portals do not include an impressum, i.e. they provide no information on owners or editorial staff. There are no particular policies or approaches to promote pluralism. The Law on Communications only establishes general regulatory principles (Article 4), which include: the protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy and impartiality; the development of professional and viable commercial and public broadcasters with the intention of striking an appropriate balance between the two; and the separation of broadcasters from political control and manipulation, so as to strengthen democratic principles and the foundations of a market economy.

¹²⁷ The relevant article facilitates stronger rules in the Member States, if they chose to oblige media services to publish ownership structures.

AVMS Art 5 (2) states that: 2. *Member States may adopt legislative measures providing that, in addition to the information listed in paragraph 1, media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners.*

Council of Europe standards in the area recommend publication of ownership structures and many countries in the region do this: for example in Serbia and North Macedonia etc.

The CRA requested the opinion from the PDPA in 2017. See discussion here:

Registar medija kao važan doprinos transparentnosti medijskog vlasništva u BiH, Media.ba, 14. august 2018.

<https://media.ba/bs/magazin-novinarstvo/registar-medija-u-bih>.

¹²⁸ Independent Media Empowerment Program (IMEP) (2021) "Mapping of media web portals" https://civilnodrustvo.ba/wp-content/uploads/2021/06/Istrazivanje_Mapiranje-medijskih-web-portala-u-BA-1_compressed.pdf.



4.3.3. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works, achieved by placing quota requirements on broadcasters (Article 16) and requirements on broadcasters that support the independent production sector (Article 17). Relevant definitions are examined above under section 4.3.1.2. These obligations are covered in the Rule on the Provision of AVMS.

**Table 53. 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 2018 AVMSD Obliges services to reserve at least 51% of its programme content annually for European works, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping.	Article 14 (5) of the Rule on the Provision of audiovisual media services 2023
Exceptions to this rule.	Yes – aligned with the 2018 AVMSD Obligations do not apply to licensees whose services are of local character, or to thematic channels, including channels for teleshopping and self-promotion.	Article 14 (7)
Rules where a minimum percentage of content (for example 10%) of content broadcast (or of programme budgets) should be European works created by producers who are independent of broadcasters.	Yes – aligned with the 2018 AVMSD Obligation to reserve, in an appropriate manner, at least 10% of its programme content for European works to be created by independent producers.	Article 15 (2) of the Rule on the Provision of AVMS 2023

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The regulatory framework is aligned with the AVMS as regards linear services. The 2018 AVMS Directive has also increased the obligations of non-linear on-demand audiovisual services regarding the promotion of European works (Article 13).

Table 54. Promotion of European works on on-demand audiovisual services

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Requirement that AVMS providers of on-demand AVMS secure at least a 30% share of European works in their catalogues and ensure prominence of those works.	Yes – aligned with the 2018 AVMSD	Article 35 (3), Rule on provision of audiovisual media services 2023
Exemptions for AVMS providers with a low turnover or a low audience?	Yes – aligned with the 2018 AVMSD Obligations are not applicable to AVMS on demand with low turnover or low audience.	As above, Article 35 (4)



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?	This will be taken into account in updating the "Instruction for reporting on the share of European works and European works of independent producers."	
Inclusion of any financial contribution obligations for services targeting the country?	No	

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

The Rule on provision of audiovisual media services, adopted 18 May 2023 by the Council of the CRA, updates the framework and has included obligations regarding on-demand AVMS. According to the information provided in the European Audiovisual Observatory's survey, the Rule also updated the former definition of an independent producer in order to ensure proper implementation; among other changes, the expression "licensee" was substituted with the expression "any television broadcaster".

4.3.4. Rules on audiovisual commercial communications

This section provides an overview of the rules on ACCs and their alignment with the AVMS Directive in terms of identification, content, placement, volume, and with regard to prohibited ACC in relation to certain goods and services have been included. The protection of minors in relation to ACC has been dealt with above under section 4.3.2.3.

Table 55. Audiovisual commercial communications (ACCs)

The AVMSD and ACCs (Articles 9,10,11 and 23)	In line with the 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 Code almost verbatim.	Code on Commercial Communications, 2023, Article 4
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 Code verbatim.	As above
ACC for the prescription of medicinal products and medical treatment shall be prohibited.	Yes – aligned with the 2018 AVMSD in the current Code verbatim.	As above, Article 6
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD Prohibited sponsorship by public or private legal or natural persons whose principal activity is the manufacture or sale of cigarettes and other tobacco	As above, Article 18



	<p>products (including electronic cigarettes and refills).</p> <p>Those involved in the manufacture or sale of medicines and medical devices and provision of medical treatments, may sponsor audiovisual media services and radio media services or programmes by promoting their name, trademark, image or activities, but not the medicines, medical devices and medical treatments available only on prescription or a referral.</p> <p>News and current affairs shall not be sponsored.</p>	
No product placement (PP) in news, current affairs, consumer affairs, religious programmes or children's programmes.	<p>Yes – aligned with the 2018 AVMSD in the current Code.</p> <p>PP prohibited in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes.</p>	As above, Article 19
PP should not affect the responsibility and editorial independence of the AVMS provider; it should not directly encourage the purchase or rental of the product; nor should it give undue prominence to the product.	Yes – aligned with the 2018 AVMSD in the current Code.	As above, Article 19
Viewers shall be clearly informed of the existence of PP in a programme.	Yes – aligned with the 2018 AVMSD	As above, Article 20
Are there limits on the proportion of television advertising spots and teleshopping spots throughout the day or during particular time periods?	<p>Yes – aligned with the 2018 AVMSD</p> <p>The Code introduces proportion limits: 20% between 6.00 a.m. and 18.00 and between 18.00 and 24.00 for commercial broadcasters; 10% between 6.00 a.m. and 18.00. and between 18.00. and 24.00. for public broadcasters and for public service broadcasters.</p>	As above, Articles 10 and 21
Are there exceptions to these rules (on limits of volume), for example for self-promotion, sponsorship, PP?	<p>Yes – exceptions are for self-promotion of their own programmes, as well as ancillary products and services directly derived from these programmes and services, sponsorship announcements and PP; announcements made in connection with other services in their ownership or those owned by affiliated companies; advertisements in the public interest and calls for humanitarian action, if they are broadcast free of charge, and neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.</p>	As above, Article 10

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey



Following the adoption of the new Code on Commercial Communications in February 2023, the legislation on audiovisual commercial communications fully aligns with the 2018 AVMS Directive. With regard to the self-regulation of ACCs, there is no association of the advertising industry that could implement self-regulation or be entrusted with co-regulation in this area. The establishment of such an association was envisaged by a Draft Advertising Law prepared in 2019¹²⁹ but the law was never adopted. The CRA's Media and Information Literacy (MIL) activities (described above in section 4.3.2.3) include advertising literacy as one of the topics.

4.3.5. 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 4.3.2 above. The establishment of the jurisdiction of VSPs was covered under section 4.3.1.3 above. In Bosnia and Herzegovina, on 24 February 2023, the CRA adopted a Rule on the Provision of video-sharing platform services in order to align with these provisions.

Table 56. Obligations on video-sharing platforms regarding content

The AVMSD and provisions on VSPs 28b	In line with the AVMSD	References
Protecting minors from harmful content in programmes, user-generated videos and ACCs; protecting the general public from programmes, user-generated videos and ACCs containing incitement to violence or hatred as well as from criminal content – provocation to commit a terrorist offence; child pornography; racism and xenophobia.	Yes – the Rule follows the provision in the 2018 AVMSD	Rule on provision of video-sharing platform services, 2023, Article 7 (1)
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others.	Yes – the Rule follows the provision in the 2018 AVMSD almost verbatim.	As above, Article 8 (1)
VSPs should clearly inform users where programmes and user-generated videos contain ACC.	Yes – the Rule follows the provision in the 2018 AVMSD	As above, Article 8 (3)
VSP should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).	VSPs are required develop codes of conduct, which aim to reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).	As above, Article 8 (6)

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

¹²⁹ <https://europa.ba/?p=61396>.



As is apparent above, this new Rule aligns directly with the AVMS Directive. 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 properly implemented. In addition, the AVMS Directive outlines the role of the NRA in assessing the measures put in place.

Table 57. Obligations on video-sharing platforms – measures and supervision (VSPs)

The AVMSD and provisions on VSPs (Article 28b)	In line with the 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 – all measures are mentioned and it is for the VSP to choose the appropriate measures.	Rule on the Provision of video-sharing platform services, 2023, Article 7 (3a) and Article 8 (4a)
Possibility to declare the presence of ACCs in user-generated video	Yes – see above.	As above, Article 8 (4b)
Reporting or flagging systems to report harmful content to the VSP provider	Yes – see above.	As above, Article 7 (3b and c)
Age verification systems for users	Yes – see above.	As above, Article 7 (3d)
Content rating systems for users	Yes – see above.	As above, Article 7 (3e)
Parental control systems	Yes – see above.	As above, Article 7 (3f)
Procedures for complaints to the VSP	Yes – see above.	As above, Article 7 (3g)
Providing media literacy measures and tools and raising users' awareness of those measures and tools	Yes – see above.	As above, Article 7 (3h)
Implementation and supervision		
Protection of the personal data of minors	Yes – the draft follows the provision in the 2018 AVMSD almost verbatim.	As above, Article 7 (6)
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	Yes – aligned with the 2018 AVMSD. The CRA shall establish the mechanisms to assess the appropriateness of the measures taken by VSP providers.	As above, Article 7 (5) and Article 8 (5)
Are there out-of-court redress mechanisms available for the settlement of disputes between	Yes – aligned with the 2018 AVMSD. The Agency will resolve disputes between the users and VSP providers	As above, Article 9



users and VSPs, and can users assert their rights before a court in relation to VSPs?	in relation to the obligations stipulated by this rule.	
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Not envisaged in the current draft.	

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

Regarding appropriate measures to be taken and the role of the CRA, the Rule reflects the AVMS Directive with the inclusion of all potential measures. It is up to the VSP services to choose for themselves the appropriate measures, and the CRA will establish mechanisms for assessing the appropriateness of these measures. The Rule includes a provision (Article 9) on dispute Resolution:

In accordance with the competences prescribed by the Law on Communications, the Agency resolves disputes between users and providers of video-sharing platforms in relation to the obligations prescribed by this Rule.

With regard to the possibility for users to assert their rights before a court, this is stipulated in Article 47 of the Law on Communications.

4.3.6. Concluding remarks and summary of findings

Bosnia and Herzegovina aligned with the 2010 AVMS Directive largely via secondary legislation; alignment with the 2018 AVMS Directive was also achieved this way. The definitions, the range of provisions, the general principles and the key values enshrined in the AVMS Directive are therefore covered in the updated regulatory rules and codes.

The draft Codes intended to align with the AVMS Directive were published for public consultation between 23 September and 6 November 2022. Three of the Codes were adopted by the Council of the CRA on 24 February 2023: the Code on Commercial Communications, the Code on Programme Content, and the Rule on the provision of video-sharing platform services. The new Rule on the provision of audiovisual media services was adopted May 18, 2023.

On a more practical level, the issues that inhibit the principle of independence of the CRA are highlighted with reference to reports and opinions. It is only via a change in the primary law (for example the development of a new Law on Electronic Media) that any enhancement of the independence of the CRA can be achieved. A number of other concerns were noted according to the information provided in the European Audiovisual Observatory's survey, such as the issue of freedom and safety of journalists.

As can be noted from the text above, the CRA plays an important role in the implementation of the *acquis* and in developing policies in areas such as media literacy and accessibility.



4.3.7. The list¹³⁰ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024. List of relevant documents, reports, opinions, etc.

Table 58. Relevant documents, reports and opinions

Title	Main topics/ themes	Link
European Commission – Directorate-General for Neighbourhood and Enlargement Negotiations (2022): Bosnia and Herzegovina Report 2022	Commission report assessing progress of BA with regard to potential candidacy for EU membership.	In English: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Bosnia%20and%20Herzegovina%20Report%202022.pdf
European Commission – Directorate-General for Neighbourhood and Enlargement Negotiations (2021): Bosnia and Herzegovina Report 2021	Commission report assessing progress of BA with regard to potential candidacy for EU membership.	In English: https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2021_en
2021 Vibrant Information Barometer produced by IREX	Examines how information is produced, spread, consumed, and used.	In English: https://www.irex.org/sites/default/files/pdf/vibe-bosnia-herzegovina-2021.pdf
Independent Media Empowerment Programme (IMEP) (2021) “Mapping of media web portals”. Supported by USAID and <i>Centar za promociju civilnog društva</i> (CPCD)	Examination of the online news media sector in BA.	In English: https://civilnodrustvo.ba/wp-content/uploads/2021/06/Istrazivanje_Mapiranje-medijskih-web-portala-u-BA-1_compressed.pdf
Western Balkans Journalists’ Safety Index – Bosnia and Herzegovina 2020 Narrative Report	Research on the safety of journalists.	In English: https://bhnovinari.ba/wp-content/uploads/2021/12/BA-ENG.pdf

¹³⁰ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



Furnémont, J.F. (2020), Review of the provisions of the Code on audiovisual media services regarding protection of minors. Study prepared under the JUFREX project	Review of protection of minors rules in BA.	In English: https://rak.ba/en/brdcs-t-media-literacy
Cappello, M. (ed.) (2019), <i>The independence of media regulatory authorities in Europe</i> , IRIS Special, European Audiovisual Observatory, Strasbourg	Comparative research on the independence of NRAs	In English: https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504

Source: Response of national expert of Bosnia and Herzegovina to European Audiovisual Observatory standardised survey

4.3.8. Data compilation

This country report is based on information and materials supplied by the national expert Asja Rokša-Zubčević, COO of Wagner-Hatfield consultancy company.



4.4. Georgia (GE)¹³¹ (Country report A¹³²)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- Amendments to the Law on Broadcasting of Georgia were adopted on 22 December 2022, with the aim of aligning the Georgian media legislation with the 2010 AVMS Directive, as amended by Directive (EU) 2018/18. Following this, two packages of amendments were adopted by the Parliament on 19 October and 17 November 2023 regarding the protection of minors and the independence of the regulator respectively.
- Regarding the alignment, there are several areas where the updated law is still in need of further amendment – for example – regarding European Works, and some rules on audiovisual commercial communications, and certain provisions on video-sharing platforms.
- General principles and key values such as non-discrimination, and the prohibition of incitement to hatred and violence are addressed in the Constitution and relevant media laws. The amendments to the law appear to have resolved the issue where the majority of potential violations were only addressed under a self-regulatory regime.

¹³¹ The country report on Georgia incorporates the feedback received from Ivane Makharadze, Commissioner at the Georgian National Communications Commission, and Nino Grdzlishvili, Head of the International Relations Office, during the checking round with the national regulatory authorities.

¹³² Country report A outlines the findings of Questionnaire A in relation to Group II, which includes Georgia.



- With regard to freedom of expression, there are concerns regarding intimidation and physical and verbal attacks on media professionals, and also the increasing level of SLAPP lawsuits against media organisations.
- Amendments to the Law on Broadcasting with regard to the public service broadcaster were adopted at the end of May 2023 without any public consultation. These amendments are considered by experts to have the aim of increasing control over the PSB in advance of the 2024 elections.
- The provisions of the independence of the NRA (the ComCom) have been assessed in a recent Opinion of the Council of Europe outlining some concerns regarding the procedures for appointing and dismissing the Council.
- The list¹³³ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.4.1. Introduction

In the context of this research, Georgia is one of the European neighbourhood countries participating in Creative Europe 2014-2020 Programme and is partially included in the Programme's MEDIA strand (Group II countries). Partial participation in the MEDIA and CROSS strands could be pursued only if there was compliance with general principles; full participation in clusters 2 and 3 was possible if tangible progress was made towards transposing the Audiovisual Media Services Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (hereinafter the AVMS Directive or AVMSD) i.e. rules on linear services are aligned and there is progress regarding the alignment of rules on on-demand services; or full participation in all actions in the MEDIA and CROSS strands was possible if there was full alignment with the AVMS Directive.

On 9 April 1991, the Supreme Council of Georgia declared independence after a referendum held on 31 March. The Supreme Council was succeeded by the Parliament of Georgia elected in October 1992.¹³⁴ Relations between the European Union and Georgia are based on the EU-Georgia Association Agreement including a Deep and Comprehensive Free Trade Area.¹³⁵ On 23 June 2022, the European Council announced that it was ready to grant

¹³³ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

¹³⁴ See here: https://www.wikizero.com/www/Supreme_Council_of_the_Republic_of_Georgia.

¹³⁵ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part: [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02)).



the status of candidate country to Georgia once the priorities specified in the Commission’s opinion on Georgia’s membership application had been addressed.¹³⁶

4.4.1.1. 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 country report. It is important to note that this country report 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 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 (ACCs) and video-sharing platforms (VSPs).

All relevant links appear in this first table.

Table 59. Legal framework

Title	Status	Relevance	Link
The Constitution of Georgia (1995) საქართველოს კონსტიტუცია (Georgian)	In force	Fundamental rights and freedoms	In Georgian: https://matsne.gov.ge/ka/document/view/30346?publication=36 In English: https://matsne.gov.ge/en/document/view/30346?publication=36
Law on Broadcasting (2004) as amended 2023 „მაუწყებლობის შესახებ“ საქართველოს კანონი (Georgian)	Adopted	Main law regulating the field of broadcasting	In Georgian: https://matsne.gov.ge/ka/document/view/32866?publication=73 In English (version includes amendments to October 2023 only): https://matsne.gov.ge/en/document/view/32866?publication=70
Law on Electronic Communications (2005)	In force	Regulation of electronic communications and telecommunications	In Georgian:

¹³⁶ European Commission (23 June 2022): European Council conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, 23 June 2022: https://ec.europa.eu/neighbourhood-enlargement/news/european-council-conclusions-ukraine-membership-applications-ukraine-republic-moldova-and-georgia-2022-06-24_en.



<p>ელექტრონული კომუნიკაციების შესახებ საქართველოს კანონი (Georgian)</p>			<p>https://www.matsne.gov.ge/ka/document/view/29620?publication=43</p> <p>In English:</p> <p>https://www.matsne.gov.ge/en/document/view/29620?publication=40</p>
<p>Law on national regulatory bodies (2002)</p> <p>(Amended in 2003, 2005, 2006, 2007, 2008, 2009, 2011, 2012, 2013, 2015, 2016, 2017, 2018, 2019, 2020)</p> <p>ეროვნული მარეგულირებელი ორგანოების შესახებ (Georgian)</p>	In force	Legal framework on national regulatory bodies	<p>In Georgian:</p> <p>https://matsne.gov.ge/document/view/14062?publication=25</p> <p>In English (version includes amendments to 2016 only):</p> <p>https://matsne.gov.ge/ka/document/view/14062?impose=translateEn&publication=18</p>
<p>Law on Advertising (1998), as amended</p> <p>რეკლამის შესახებ (Georgian)</p>			<p>In Georgian:</p> <p>https://matsne.gov.ge/ka/document/view/31840?publication=31</p> <p>In English:</p> <p>https://matsne.gov.ge/ka/document/view/31840?impose=translateEn&publication=24</p>
<p>Code of Conduct of the Broadcasters (adopted by National Communication Commission (ComCom) resolution No. 2, 12 March 2009).</p> <p>საქართველოს კომუნიკაციების ეროვნული კომისიის 2009 წლის 12 მარტის №2 დადგენილებით დამტკიცებული „მაუწყებელთა ქცევის კოდექსი“ (Georgian)</p>		Self-regulatory code of broadcasters. Covers issues such as non-discrimination, hate speech and right to reply	<p>In Georgian:</p> <p>https://matsne.gov.ge/ka/document/view/82792?publication=1</p>
<p>Criminal Code of Georgia (1999), as amended</p> <p>საქართველოს სისხლის სამართლის კოდექსი (Georgian)</p>	In force	Criminal offences	<p>In Georgian:</p> <p>https://matsne.gov.ge/ka/document/view/16426?publication=242</p> <p>In English version to 2016:</p>



		https://matsne.gov.ge/en/document/download/16426/157/en/pdf
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Source: Response of national expert of Georgia to European Audiovisual Observatory standardised survey

In 2018, the NRA, the Georgian National Communication Commission (ComCom), prepared the Proposal for a Draft Law on Audiovisual Media Services (also referred to as the Draft Law amending the Law on Broadcasting) with the intention that this would replace the existing Law on Broadcasting (2004). However, this proposal did not move forward. ComCom and other relevant authorities were then engaged in the drafting of new amendments, and a series of consultations with stakeholders.¹³⁷ A new Draft Law (amendments to the "Law on Broadcasting" of Georgia) was submitted to the Parliament of Georgia as of 7 September 2022, and the amendments were adopted on 22 December 2022.

Regarding regulation, certain elements of the law are dealt with by broadcasters in a self-regulatory approach. For other issues, the ComCom is competent. Previously, there were a range of issues under the self-regulatory regime of the broadcasters such as protection of minors and also hate speech. This issue was partly addressed in 2009, when the Constitutional Court issued a decision that ensured Article 56 (4) was removed from the self-regulatory regime. The Article stated that: 'Broadcasting of pornography and programmes or advertisements abusing a citizen's and a person's dignity and his/her fundamental rights and that contain obscenity, are prohibited'.¹³⁸

The 2022 amendments to the Law had more or less resolved this issue. Several deletions were made in the amendments under Article 56, and a new Article 55² was introduced, which appeared to have removed prohibitions on hate speech and incitement to violence from the self-regulatory system. Two packages of amendments were consequently adopted by the Parliament on 19 October and 17 November 2023 regarding the protection of minors and the independence of the regulator respectively. Article 56(4) was deleted and reintroduced under Article 56¹ (3). The protection of minors, which is dealt with in Article 56¹, also remains under the ComCom's remit under Article 59¹ (3). The remaining issues at the self-regulatory level include journalism ethics, but also the right to reply.

4.4.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant current definitions with the AVMS Directive. The amendments to the Law on Broadcasting (2004) aligned the national legislative framework with most of those in the AVMS Directive.

¹³⁷ This process was supported by (among others) EU TAIX workshops.



Table 60. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	Yes – aligned with the 2018 AVMSD.	Law on Broadcasting (2004), as amended in 2023, Article 2 (r ²)
Video-sharing platform service (VSP)	Yes – the aligned with the 2018 AVMSD.	As above, Article 2 (r ⁴)
Programme	Yes – the aligned with the 2018 AVMSD.	As above, Article 2 (z ₁)
User-generated video	Yes – the aligned with the 2018 AVMSD.	As above, Article 2 (r ⁵)
Editorial decision	Yes – the aligned with the 2018 AVMSD.	As above, Article 2 (r ⁵)
Editorial responsibility	Yes – the closely aligned with the 2018 AVMSD. It does not include the phrase “Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided”	As above, Article 2 (s ⁴)
Media service provider	Yes – the aligned with the 2018 AVMSD. The definition is for “audiovisual media service provider”	Law on Broadcasting (2004), as amended in 2023, Article 2 (r ³)
VSP provider	Yes – the aligned with the 2018 AVMSD.	As above, Article 2 (r ⁶)
Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD. There are definitions for TV Broadcaster and for Broadcaster, which incorporate the terms of the Directive	As above, Article 2 (S) and Article 2 (s ²)
Broadcaster	Yes – aligned with the 2018 AVMSD. (see above)	As above, Article 2, S
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD.	As above, Article 2 (z ₂₉)
Audiovisual commercial communication (ACC)	Yes – aligned with the 2018 AVMSD. The actual definition is longer but incorporates the definition in the Directive	As above, Article 2 (z ₂ ¹)
Television advertising	Yes – the current law is closely aligned with the 2018 AVMSD.	As above, Article 2 (z ₂ ¹) Article 2 (m)



Definitions (Article 1 AVMSD)	In line with AVMSD	References
	The law has a definition for advertising, which in the previous law was more closely aligned with the Directive. The same definition exists in the Law on Advertising. The phrase “in return for payment or for similar consideration” seems to have been removed.	Law on Advertising (1998), amended 2023 Article 3 (15)
Surreptitious ACC	Yes – aligned with the 2018 AVMSD.	As above, Article 2 (z ₃₀)
Sponsorship	Yes – aligned with the 2018 AVMSD.	As above, Article 2 (z ₁₆)
Teleshopping	Yes – aligned with the 2018 AVMSD.	As above, Article 2 (z ¹⁷)
Product placement	Yes – aligned with the 2018 AVMSD.	As above, Article 2 (z ₂₄)
European works	Yes – aligned with the 2018 AVMSD.	As above, Article 2 (g)
Independent producer	Yes – partly aligned with the 2018 AVMSD. There is no definition of independent producer, but a definition of “independent programme”: “programme – a programme in relation to which there is no interdependence between the copyright holder and a broadcaster”	As above, Article 2 (f)
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	Yes – aligned with the 2018 AVMSD. Harmful content is defined in relation to the protection of minors.	As above, Article 56 ¹ (2)
Definition of incitement to hatred (or equivalent)	Yes – aligned with the 2018 AVMSD. The law prohibits discrimination and violence or contempt towards individuals and groups (defined by specific characteristics).	As above, Article 55 ²

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

In terms of definitions, the Law on Broadcasting (2004), following the amendments at the end of 2022, aligns with most of the definitions in the 2018 AVMSD. For example, there is a definition for independent programme rather than independent producer. Hate speech is defined and prohibited in the Law and the details on the regulation of this are outlined below (see under the section covering general principles and key values).



4.4.1.3. 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 61. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers	Yes – aligned with the 2018 AVMSD as regards the establishment of jurisdiction.	Law on Broadcasting (2004), as amended 2023, Article 1 (3-5)
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 – in line with the 2018 AVMSD.	As above, Article 70 (10)
Article 2 (5b). Requirement to maintain up-to-date list of the AVMS providers under national jurisdiction	Yes – in line with the 2018 AVMSD.	As above, Article 70 (10)
Article 28a (paragraphs 1-5) regarding establishment of the jurisdiction of VSPs	Yes – aligned with the 2018 AVMSD.	Law on Broadcasting (2004), as amended 2023, Article 1 (7-9)
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 – in line with the 2018 AVMSD.	As above, Article 70 (10)
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing an opinion on jurisdiction	Not mentioned.	

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

The legislative framework with regard to jurisdiction is aligned with the 2018 AVMS Directive following the adoption of the amendments. It now includes VSPs and the provisions of the 2018 AVMS Directive under Article 2 (5a and 5b regarding the requirement that AVMS providers inform the competent national regulatory authorities or bodies about any changes that may affect the determination of jurisdiction, and the requirement to maintain an up-to-date list of the audiovisual media service providers under national jurisdiction).



The principle of freedom of reception and retransmission for audiovisual media services is examined below.

Table 62. 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 – aligned with 2018 AVMSD as it establishes free reception and unrestricted retransmission of the media services authorised/licensed in other states on Georgian territory.	Law on Broadcasting (2004), as amended in 2023, Article 45 ³ (1)
Article 3(2) – derogations from the principle of freedom of reception and retransmission	Yes -closely aligned with the 2018 AVMSD The Law specifies the types of infringements regarding content that can justify derogations from the freedom of reception and retransmission in line with the Directive. Derogation is made by a ComCom decision, and procedures include communicating with the relevant regulatory authority who has jurisdiction over the service, and allowing the media service provider the opportunity to express its views on the alleged violation.	As above, Article 45 ³ (2-4)

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

The principle of freedom of reception and retransmission was introduced to the Law on Broadcasting (2004) following the adoption of amendments at the end of 2022. The amendments also introduced provisions on derogations from the principle that are closely aligned with the 2018 AVMS Directive.

4.4.2. 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 63. General principles and key values

General principle/ key value	Relevant provision/provisions	References
Principle of non-discrimination	<p>The Constitution under Article 11 enshrines the right to equality. It prohibits any discrimination on the grounds of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds (Article 11 (1)).</p> <p>Citizens of Georgia, regardless of their ethnic and religious affiliation or language, shall have the right to maintain and develop their culture, and use their mother tongue in private and in public, without any discrimination. (Article 11 (2)).</p> <p>Article 11 (3) guarantees equality between men and women. Article 11 (4) addresses the rights of persons with disabilities.</p> <p>***</p> <p>The Criminal Code prohibits discrimination – specifically racial discrimination.</p>	<p>Constitution of Georgia (1995), Article 11</p> <p>***</p> <p>Criminal Code (1999), Article 142 (1)¹</p>
Principle of non-discrimination	<p>Broadcasters are committed to ensuring due coverage of all significant and different opinions in news programmes related to the facts and events, without discriminating against any group or opinion. (54 (2))</p> <p>The issue of discrimination is addressed only in relation to advertising: Article 63 2⁵ prohibits the placement of advertisements containing or inciting discrimination on the basis of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.</p> <p>The amendments to the law introduced the same prohibitions for VSPs (Article 45⁴ b)</p>	<p>Law on Broadcasting (2004) as amended 2023, Article 54 (2), Article 63 2⁵.</p> <p>and Article 45⁴ b</p>
Prohibition of incitement to hatred and incitement to violence	<p>The Constitution (under Article 23 (3)) prohibits the establishment of political parties that aim to overthrow or forcibly change the constitutional order of Georgia, infringe on the independence or violate the territorial integrity of the country, or that propagate war or violence or incite national, ethnic, provincial, religious or social strife.</p> <p>***</p> <p>Any type of war propaganda is prohibited (Article 56 (1)).</p> <p>The new Article 55² prohibits programmes that incite violence or hatred, and prohibits</p>	<p>Constitution of Georgia (1995), Article 23</p> <p>***</p> <p>Law on Broadcasting (2004) as amended 2023, Articles 56 (paragraphs 1)</p> <p>This above is regulated via a self-regulation mechanism of broadcasters: Code of Conduct of the Broadcasters</p>



	<p>programmes that contain incitement to terrorism.</p> <p>The broadcasting of programmes containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group, is prohibited.</p> <p>The broadcasting of programmes intended to abuse or discriminate against any person or group, or which are intended to highlight differences, are prohibited, except when this is necessary due to the content of a programme and when the aim is to illustrate existing hatred.</p> <p>***</p> <p>The Criminal Code prohibits acts committed to incite national or racial rivalry or discord.</p>	<p>New Article 55² – Prohibition of advertisements and programmes containing hate speech and incitement to terrorism</p> <p>***</p> <p>Criminal Code, Article 142¹</p>
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism</p>	<p>The Criminal Code prohibits acts committed to incite national or racial rivalry or discord. It also prohibits child pornography, and incitement to terrorism.</p> <p>***</p> <p>The broadcasting of pornography and programmes or advertisements abusing a citizen's or a person's dignity and his/her fundamental rights and that contain obscenity, are prohibited (Article 56¹ (3)).</p> <p>Programmes or advertisements under paragraph 3 of this article (except for programmes or advertisements abusing fundamental human rights and freedoms) may be broadcast only in an encrypted form, on the basis of individual contracts with customers (Article 56¹ (3)).</p> <p>Article 55² prohibits incitement to hatred and provocation to commit a terrorist offence</p> <p>It is not clear that this provision covers VSPs, as this is not mentioned in the obligations for VSPs under Article 45⁴ The fact that the definition of programmes includes video-clips may imply that content on VSPs is included here but it is not explicitly stated.</p>	<p>Criminal Code of Georgia (1999), as amended</p> <p>Article 330 -1 – Open support of terrorist activities and/or a terrorist organisation or public incitement to terrorism</p> <p>Article 255 – Illegal making or sale of a pornographic work or other items</p> <p>Criminal Code, Article 142¹</p> <p>***</p> <p>Law on Broadcasting (2004) as amended 2023, Article 56¹ (3)</p> <p>Article 55² – Prohibition of advertisements and programmes containing hate speech and incitement to terrorism</p>

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

In summary, all of the above principles: non-discrimination, prohibition of incitement to hatred and violence and, to some extent, the prohibition of criminal content are dealt with in the legal framework.



The Constitution, the Criminal Code and the Law on Broadcasting (2004) all address the principle of non-discrimination and incitement to hatred. The Law on Broadcasting (2004, as amended in 2022) also prohibits incitement to hatred and provocation to commit a terrorist offence under a new Article 55².

These provisions were previously under Article 56 (4 and 6), which have now been deleted. The previous provision on prohibiting the broadcasting of programmes intended to abuse or discriminate against any person or group (previously part of Article 56 (2) which has been deleted) appears to have been lost in the deletions of old, and introductions of new articles.

It is not clear that this provision covers VSPs, as this is not mentioned in the obligations for VSPs under Article 45⁴. The fact that the definition of programmes includes video-clips may imply that content on VSPs is included here but it is not explicitly stated. Instead there is a broad reference to crime under the Criminal Code under Article 45.⁴

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

The table below indicates the relevant legal framework in Georgia for the protection of freedom of expression. In addition to the Constitution, there is a specific Law on Freedom of Speech and Expression.

Table 64. Freedom of expression

General principle/key value	Relevant provision/provisions	References
Freedom of expression/ freedom of the media / prevention of censorship/ right to information	The Constitution guarantees the rights to freedom of opinion, information, mass media and the internet. The mass media shall be free and censorship shall be inadmissible. Neither the State nor individuals shall have the right to monopolise mass media or the means of dissemination of information. Everyone has the right to access and freely use the internet.	Constitution of Georgia (1995), Article 17
Freedom of expression/ freedom of the media/ prohibition of censorship	Article 2 states that the Law shall be interpreted according to the Constitution of Georgia, international legal obligations undertaken by Georgia, including the European Convention on Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights. Article 3 guarantees freedom of speech and expression as eternal and supreme human values.	Law of Georgia on Freedom of Speech and Expression (2004), Articles 2 and 3
Freedom of expression	The Law (among others) is intended to ensure the freedom of speech and expression	Law on Broadcasting (2004), as amended in 2023, Article 1 (2)

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



Freedom of expression is guaranteed in both the Constitution and in the Law on Freedom of Speech and Expression (2004). The latter also addresses restrictions on freedom of speech, and defamation. The Law on Broadcasting (2004, as amended in 2022) also aims to ensure freedom of speech and expression. Although media freedom in Georgia is guaranteed by law, and there is a high standard of freedom of expression, there are still problems in relation to the implementation of this legislation. There have been many attacks on media professionals in recent years, most of which have not been investigated.

The May 2023 report of the Georgian Democracy Initiative (GDI) outlined a significant increase in recent years in SLAPP (Strategic Litigation Against Public Participation) lawsuits against media organisations.¹³⁹ In addition, the report's findings state that the judicial proceedings do not follow accepted international practice in this area with regard to burden of proof, balancing of rights and protection of freedom of expression. The report also states that the Courts award disproportionately high amounts for moral damages to defendants in cases initiated by influential individuals.

In its opinion on the Application of Georgia for EU Membership, the European Commission noted that while the media environment is largely pluralistic, intimidation and physical and verbal attacks on media professionals have increasingly taken place, especially in the context of demonstrations and election rallies. Investigations into these violations are not sufficient. The opinion also stressed that court proceedings and investigations against opposition media owners have become frequent. Recent verdicts have had a chilling effect on critical media reporting. It concluded that further alignment of the legislation on the media regulator ComCom with European standards is needed.¹⁴⁰

At the end of May 2023, the Government also introduced amendments to the Law on Broadcasting in relation to the public broadcaster (GPB) via a fast procedure where no prior consultation was held with either government or non-governmental bodies or expert groups. According to the civil society, the amendments, among others, extend the Board Chairman's tenure from 3 to 6 years and chairmanship requirements would be upgraded.¹⁴¹ There is concern among experts and civil society that these amendments by the Parliament aim to prolong the tenure of the current Board Chairman to presumably have a stronger influence over GPB ahead of the 2024 elections.

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

The NRA is the Communications Commission (ComCom, or "the Commission"). The functions of the Commission include the following: developing policy; supervising and controlling authorised services; allocating frequency spectrum; monitoring adherence to legislation in the field of broadcasting; imposing appropriate sanctions; supervising and controlling issues related to copyright and related rights, the protection of minors, and advertising;

¹³⁹ Georgian Democracy Initiative (GDI)- Special Report - Regarding SLAPP Cases in Georgia. May 2023.

¹⁴⁰ EC (2022): COM (2022) 405 final: Communication from the Commission to the European Parliament, the European Council and the Council – Commission Opinion on Georgia's application for membership of the European Union: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf>.

¹⁴¹ <http://mediacoalition.ge/en/a/0de59cca>.



resolving disputes; adopting legal acts, including codes of conduct; and facilitating the improvement of media literacy within the society.

Table 65. Independence of the national regulatory authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Commission is a legal entity under public law, a permanent national regulatory body that is not subject to any state agency.</p> <p>***</p> <p>1. In the ordinary course of its activities, a National Regulatory Body shall be guided by the principles of independence, publicity and responsibility.</p> <p>2. Any type of interference in the ordinary course of activities of a National Regulatory Body, or interference in its control, or request for a report regarding its activities, shall not be permitted unless otherwise provided for by law.</p>	<p>Law on Broadcasting (2004), as amended 2023, Article 5 (2)</p> <p>***</p> <p>Law of Georgia on National Regulatory Bodies (2002), as amended</p> <p>Article 4 (1) and (2)</p>
NRAs should exercise their powers impartially and transparently	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Commission, members of the Commission and employees of the staff of the Commission are independent in exercising their powers and abide only by the law. Unlawful influence on and intervention in their activities are inadmissible, and a decision made as a result of such influence and intervention is deemed void (Article 6 (1)).</p> <p>Any concerned person may apply to a court for the purpose of avoiding and preventing unlawful influence or intervention, and to nullify decisions made as a result of such intervention and influence (Article 6 (2)).</p>	<p>Law on Broadcasting (2004), as amended 2023, Article 6 (paragraphs 1 and 2)</p>
Clear definition of the competences and powers of the NRAs outlined in the law	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The functions of the Commission in the field of broadcasting outlined in detail under Article 5.</p>	<p>As above, Article 5</p>
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The budget of the Commission is funded by a regulation fee and other funding sources provided for by this Law, the Law on Electronic Communications and the Law on Legal Entities under Public Law.</p> <p>***</p> <p>The Law on National Regulatory Bodies guarantees under Article 4 (3g) the right of the national regulatory body to make independent decisions from any political body, and the right to a separate annual budget.</p>	<p>As above, Article 12 (2)</p> <p>***</p> <p>Law of Georgia on National Regulatory Bodies (2002) as amended</p> <p>Article 4 (3g)</p> <p>Article 7 (3) and (4)</p>



AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
	The budget is based on fees paid by the regulated services (Article 7 (3)), and unused funds are made available to the NRA the following year (Article 7 (4)).	
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>Yes – closely aligned with the 2018 AVMSD in the law.</p> <p>The Commission is composed of five members, with a six-year term of office. The law provides for an open competition for the election of members in compliance with the principles of legality, transparency, equality of the candidates, independence and impartiality. It describes the requirements for candidates both professional and regarding personal integrity. Anyone may nominate a candidate for membership of the Commission within 30 days after the competition is announced. The list of candidates and documents submitted by them for the competition shall be published on the official website of the Government of Georgia. A Competition Commission, composed of impartial and competent persons, shall be established by the Order of the Prime Minister of Georgia to select the candidates. At least 3 candidates must be found to satisfy qualification requirements of education and professional experience, at the risk of launching a new competition. Otherwise, the Commission shall conduct interviews with the candidates and submit to the Government of Georgia a recommendation regarding the candidates to be nominated. The Government of Georgia shall submit a list to the President of Georgia that will be presented to the parliament. After the president signs off on the list, it is sent to parliament for agreement (Articles 9 (1) – 9 (13)).</p> <p>Article 10 (1) stipulates that a member of the Commission shall be dismissed under the procedure established by the regulations of the Parliament of Georgia. Article 10 (2): A decision on the dismissal of a member of the Commission may be appealed to a court. Article 11 deals with conflict of interest.</p> <p>***</p> <p>Rules of Procedure of the Parliament of Georgia:</p> <p>Under Article 185 a range of grounds for dismissal of a member of the National Communications Commission is provided including: criminal conviction by a court, illness, or death.</p>	<p>Law on Broadcasting (2004), as amended 2022,</p> <p>Article 9 (1) – 9 (13) Articles 10 and 11</p> <p>***</p> <p>Rules of Procedure of the Parliament of Georgia</p> <p>Article 185 – Dismissal of a member of the Georgian National Communications Commission</p>
Existence of effective and independent appeal mechanisms	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Legal acts of the Commission may be appealed to a court as determined by legislation.</p>	As above, Article 8.7



AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
Provisions in the law that support cooperation between NRAs	Yes – aligned with the 2018 AVMSD. Article 6 (4) – A National Regulatory Body may enrol, or cooperate with, or consult with, or develop any other kind of relations with international organisations (associations), foundations or non-profit (non-commercial) legal entities with scopes of authority which are the same as or similar to that of the National Regulatory Body.	Law of Georgia on National Regulatory Bodies (2002), as amended Article 6 (4)

Source: Response of national expert of Georgia 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 that this aligns closely with the 2018 AVMSD. Of note is the fact that a specific Law of Georgia on National Regulatory Bodies regulates this area with an emphasis on independence, independent decision-making and the right of regulatory bodies to have and manage their own annual budgets.

Since its establishment in 2000, the Georgian National Communications Commission (now ComCom) has been functioning as an independent regulatory authority for electronic communications and broadcasting in Georgia. The independence of ComCom was assessed in 2020 in a report elaborated within the EU4Digital Initiative.¹⁴² The report stated that the Georgian regulatory system is well aligned with the EU regulatory framework and that legal guarantees of the independence of the NRA have been established in the Constitution of Georgia since 2017 with further technical changes introduced in 2018.

A recent review of the updated Law on Broadcasting (in its entirety) examined the procedures for selection and dismissal of the members of the Commission.¹⁴³ They noted that Commission members are appointed for six years and are allowed a second mandate, and commented that this was an unusual example of a very long term of office. The review did, however, also note that there are other jurisdictions where mandates of five or six years can be renewed.

With regard to the election of candidates, the Opinion noted that the Government selected a list of candidates to be voted on by Parliament on the basis of an open competition but did not detail how the final list was selected and by whom. This allowed for political influence on who is included in the final list. The Opinion emphasised the usual

¹⁴² EU4Digital: supporting digital economy and society in the Eastern Partnership: Gap assessment of Georgia regulatory system in the field of electronic communications: <https://eufordigital.eu/wp-content/uploads/2021/04/Gap-assessment-of-Georgia-regulatory-system-in-the-field-of-electronic-communications.pdf>.

¹⁴³ Council of Europe (2023): Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department – on The Law of Georgia on Broadcasting. Prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Sally Broughton Micova.



practice in Europe involving of the role of a “cross-party parliamentary committee” in vetting the candidates.

However, amendments to the Law on Broadcasting adopted in November 2023 further specified the election procedure. In particular, it specified that candidates would be selected through an open competition in accordance with the principles of legality, transparency, equality of candidates, independence and impartiality. In addition, a Competition Commission composed of impartial and competent persons is to be established by Order of the Prime Minister of Georgia to select the candidates. At least three candidates must be found to satisfy the qualification requirements in terms of education and professional experience. Failing this, a new competition will be launched. The Commission must interview the candidates and make a recommendation to the Government of Georgia on the candidates to be nominated.

In many other jurisdictions, civil society and NGOs are engaged in nominating candidates for such position, which is another model to that could be used to ensure representativeness and limit political influence.¹⁴⁴

The Opinion also noted that the final vote on the list in Parliament is by simple majority and implies that the list chosen by the Government will be elected by the ruling parties. The Opinion recommends using a 2/3 or 3/4 majority in line with best European practice.

Procedures for the dismissal of members of the Commission in the Law on Broadcasting make direct reference to the Rules of Procedure of the Parliament of Georgia. The Council of Europe Opinion emphasised that such procedures should be outlined in the Law. The Opinion also examined these Rules of Procedure and noted that the dismissal of members of the Board, regardless of the condition leading to dismissal (including even imprisonment), has to be agreed upon by the Parliament via a vote. This represented a further issue with regard to the lack of political independence of the Commission. The amendments to the Law on Broadcasting adopted in November 2023 specify that the Parliament shall hold a vote on dismissal of the member of the Commission within 30 days after the issue is added to the agenda of the plenary. The Communications Commission of Georgia and the member of the Commission whose dismissal is being discussed, has a right to present his/her position, either in an oral or written form, to the Parliament at the plenary session. In addition, Article 6 (5) covers independence and immunity, whereby “A member of the Commission may be detained or imprisoned, or searched only with the consent of the Parliament of Georgia.”

Feedback from the NRA emphasised that, in practice, this does not lead to any interference in judicial proceedings. These additional safeguards were introduced as there had been several instances in the past of “framing” and intimidation of Commission Board members for political or other goals.

The Opinion also suggested other areas where the provisions on the NRA could be improved including: enhancing the professional criteria for selection of candidates for the

¹⁴⁴ For example, there are procedures where civil society nominates candidates in Albania, Denmark, Lithuania, Montenegro, North Macedonia, Serbia, or where civil society is consulted regarding candidates in Latvia.



Commission; ensuring the quorum for decision-making is a majority of the full membership; clarifying that conflicts of interest are absolute; ensuring that the ComCom rather than Parliament should organise its own independent audits.

4.4.2.3. 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 providers to protect minors from harmful content; with regard to protecting minors from harm in the context of ACCs; and in relation to prohibited/restricted advertising.

Table 66. The protection of minors

AVMSD and the protection of minors	In line with AVMSD	References
Obligations to protect minors from harmful content, via watershed/scheduling, age verification tools or other technical measures	Yes – aligned with the 2018 AVMSD. Broadcasters shall not, without labelling appropriate age signs and without determining airtime, broadcast programmes or place material in the programme that may harm the physical, psychological, intellectual and spiritual development of minors, or their mental or physical health or socialization. Broadcasting of a programme or an advertisement containing pornography, and placement of such a programme or an advertisement encroaching on dignity and fundamental rights and freedoms of a human/citizen that contains obscenity, shall be prohibited. A programme or an advertisement provided for by this paragraph (except for a programme or advertisement encroaching on the fundamental rights and freedoms of a human) may only be place in an encrypted form, on the basis of an individual contract with a customer.	Law on Broadcasting (2004), as amended 2023, Article 56
Prohibition of commercial use of personal data of minors collected when implementing these measures	Yes – aligned with the 2018 AVMSD.	As above, Article 56 ³
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	Yes – aligned with the 2018 AVMSD. Broadcasters should provide a proper and clear warning that a programme contains certain age-inappropriate material. The warning is represented by a special visual marking, which is continuously present during the whole	As above, Article 56 ¹ (6)



AVMSD and the protection of minors	In line with AVMSD	References
	broadcast. There should also be pre-broadcast written and verbal warnings.	
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>Yes – aligned with the 2018 AVMSD.</p> <p>The advertisement of a tobacco product, tobacco accessory and/or a device designated for tobacco consumption shall be prohibited.</p> <p>For minors under 18, programmes (announcements) consisting of the following elements are deemed inappropriate:</p> <p>F) Justification of approval of the usage of tobacco or alcohol (Article 56² (F)).</p>	<p>As above,</p> <p>Article 63 (2¹)</p> <p>Article 56² (F)</p>
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	<p>Yes - aligned with the 2018 AVMSD in the Law on Advertising.</p> <p>***</p> <p>This provision has been included in the section related to VSPs.</p>	<p>Law on Advertising (1998), as amended</p> <p>Article 14</p> <p>***</p> <p>Law on Broadcasting (2004), as amended 2023,</p> <p>Article 45⁵ – Obligations of video-sharing platform providers relating to audiovisual commercial communications</p>
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	<p>Not mentioned in the law.</p> <p>Specific obligations are not included in the law. However, this will constitute part of the self- and co-regulation, where these issues will be covered within the Code of Conduct of Georgian Broadcasters.</p> <p>According to the paragraph 37, article 76 of the Law on Broadcasting, Georgian National Communications Commission is obliged to adopt codes of conduct for on-demand audiovisual media service providers and video sharing platform providers.</p>	<p>Law on Broadcasting (2004), as amended 2023,</p> <p>Article 76 (para 37)</p>
Prohibiting of product placement in children's programmes	Yes – aligned with the 2018 AVMSD.	Law on Broadcasting (2004), as amended 2023, Article 69 ¹

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

The national legislative framework is closely aligned with the 2018 AVMS Directive as regards the protection of minors in audiovisual media services. Amendments to the Law on



Broadcasting (2004) were adopted on 22 December 2022 and later again on 19 October 2023. Certain provisions on audiovisual commercial communications are covered in the Law on Advertising.

No specific mention is made in the law of the obligation to reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS). However, according to feedback from the NRA this will constitute part of the self- and co-regulation, where these issues will be covered within the Code of Conduct of Georgian Broadcasters, to be elaborated by the ComCom.

The former approach of using a self-regulatory mechanism for the protection of minors raised questions regarding the effectiveness of such a system.¹⁴⁵ However, the 2022 amendments to the Law appear to have resolved this issue with protection of minors under the regulatory remit of the ComCom.

The Commission set up a media literacy educational research centre with the organisational and legal form of a non-entrepreneurial (non-commercial) legal entity.¹⁴⁶ The Media Academy aims to facilitate media literacy development, to evaluate the status of media literacy within the society, identify challenges and conduct studies for the facilitation of media literacy development. The centre holds special training courses and implements programmes for various age groups in the society and other groups (children and their parents, teachers, media representatives, etc.). The Commission has also established a new Media Literacy Department.

4.4.2.4. 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 current obligations in Georgia appear to be limited. According to the current law, the Public Broadcaster shall take into account the interests of persons with disabilities and provide sign language interpretation in their programmes related to elections and/or referenda and/or plebiscites, which are broadcast during electoral campaigns and referenda and/or plebiscites. Also, the Public Broadcaster should raise public awareness to ensure the promotion of the potential of persons with disabilities and their contribution to public life, as well as to periodically inform the public about the rights of persons with disabilities.

¹⁴⁵ Technical Paper on Professional Media Regulation: European Standards, Practice and Perspectives for Georgia: Contribution and Inputs from Experts’ Participation in the Seminar on “Freedom of Expression Standards and Media Content regulation: CoE and EU practices”, 14-15 July 2022; and the Online Roundtable on “Professional media regulation: European standards, practice and perspectives for Georgia”, 18 July 2022.

¹⁴⁶ <https://mediaacademy.ge>.

**Table 67. 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	Yes – aligned with the 2018 AVMSD in the Law. The Public Service Broadcaster also has further obligations in this area: to take into account the interests of persons with disabilities and provide them with access to general public information, including the provision of sign language interpretation in programmes related to elections and/or referenda and/or plebiscites, which are broadcast during electoral campaigns and referenda and/or plebiscites (Article 16 (j))	Law on Broadcasting (2004) as amended 2023, Article 51 ² (1) Article 16 (j)
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 Law.	As above, Article 51 ² (2 and 3)
States should provide a public online point of contact for providing information and receiving complaints	Yes – aligned with the 2018 AVMSD in the Law, which creates an online point of contact at the office of public defender of communications (independent body within Communications Commission).	As above, Article 51 ² (4)
Emergency information should be in accessible formats	Yes – aligned with the 2018 AVMSD in the Law.	As above, Article 51 ² (5)

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

As can be seen in the table above, following the adoption of amendments to the Law on Broadcasting (2004) in December 2022, the legislation now includes all the obligations regarding accessibility of audiovisual media services as outlined in the 2018 AVMS Directive.

4.4.2.5. 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 AVMS Directive requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The table below looks at the legislative framework in Georgia regarding these provisions.



Table 68. 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	<p>Not aligned with the 2018 AVMSD</p> <p>Media service providers are obliged to include this information when applying for licences/ authorisation etc. But there is no obligation in the Law for them to make this information public accessible.</p>	<p>Law on Broadcasting (2004), as amended 2023</p>
Possible to also require AVMS providers to make accessible information on their ownership structures	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Broadcasters are required, annually, to publish and to provide the NRA with details on their licences, ownership structure, and shares in other broadcasters, and/or other media outlets. They also provide information on the shareholders in the broadcaster and their other shareholding interests in media outlets.</p>	<p>Law on Broadcasting (2004), as amended 2023, Article 61</p>
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Under Article 70 (10) the Commission is required to keep a corporate register of licences and authorisations.</p> <p>Article 45¹ (4) – Within 10 working days after receiving an application, the Commission shall carry out the authorisation of broadcasting by registering authorised persons in its corporate register. The data on declarations of compliance shall also be entered into the corporate register of authorised persons and the declarations shall be available to any person.</p> <p>***</p> <p>Under the Rules governing the activities of the Georgian National Communications Commission, Article 32 (5), this register must be accessible to the public.</p> <p>The Register is published on the official webpage of ComCom: https://registry.comcom.ge/.</p>	<p>Law on Broadcasting (2004), as amended 2023</p> <p>Article 70 (10)</p> <p>Article 45¹ (4)</p> <p>***</p> <p>Rules governing the activities of the Georgian National Communications Commission,</p> <p>Article 32 (5)</p>

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

There is no obligation in the Law regarding an impressum. Media service providers are obliged to include this information when applying for licences / authorisation etc. But there is no obligation in the Law for them to make public this information.

However, there are obligations regarding transparency of ownership, including publication. According to the national expert, no major obstacles have been reported as to



the implementation of these obligations. The Law on Broadcasting (2004), under Article 37, also provides restrictions on the type of persons who may not hold a licence for broadcasting including: an administrative body, except for a higher educational institution; an official of an administrative body or other officer; a legal person interdependent with an administrative body; a political party or its official; a legal person registered offshore, etc.

In addition, following the 2013 amendments to the Law on Broadcasting, the Communications Commission, with the involvement of NGOs and civil society adopted electronic forms of reporting for Georgian broadcasters. These forms contain information about sources of financing including a breakdown of revenues received from advertising, sponsorship, teleshopping and contributions of a broadcaster owner or any other person. The revenues should be disclosed to the last individuals/legal entities.

4.4.3. 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 69. 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	Partly aligned with the 2010 AVMSD and the 2018 AVMSD. According to the law regarding the promotion of European works, broadcasters shall, where possible, reserve a part of its television time for European works. This part of time allotted for European works shall be used progressively, on the basis of relevant criteria by taking into account the informational, educational, entertainment and cultural obligations of the broadcaster towards its audience. (see also discussion under the main text)	Law on Broadcasting, (2004) as amended 2023, Article 51 (1)
Exceptions to this rule	Except for the time allotted for news, sports events and games, advertisements, teletext and teleshopping.	As above, Article 51 (2)
Rules where a minimum percentage of content (for example 10%) of content broadcast (or of programme budgets)	Yes – aligned with the 2018 AVMSD in the Law.	Law (changes to the "Law on Broadcasting" of Georgia) (2023), Article 21



AVMSD and the promotion of European works (linear services) (Articles 16 and 17)	In line with AVMSD	References
should be European works created by producers who are independent of broadcasters		

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

As can be seen above, the Law does not contain majority quota obligations (for example more than 50% of content) to promote European works. Instead, the wording states that broadcasters shall, where possible, allot a part of television time for European works.

According to feedback from the NRA, this is actually related to a technical error in the law whereby the word “majority” is absent. It is intended that the Parliament will address this problem as there was a political agreement that have majority quota obligations (50%+) for TV Broadcasters to promote European works and 30%+ quota obligations for On-demand audiovisual media service providers.

The Law aligns with the 2018 AVMS Directive regarding requirements for quotas for content produced by independent broadcasters. However, there is no definition of independent producer, but rather “independent programme”.

The 2018 AVMS Directive also increased the obligations of non-linear on-demand audiovisual services regarding the promotion of European works (Article 13).

Table 70. Promotion of European works on on-demand audiovisual services

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Requirement that AVMS providers of on-demand AVMS secure at least a 30% share of European works in their catalogues and ensure prominence of those works	Yes – aligned with the 2018 AVMSD	Law on Broadcasting, (2004) as amended 2023, Article 45 ² (3)
Exemptions for AVMS providers with a low turnover or a low audience?	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ² (4)
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?	Yes – low turnover and low audience will be calculated following the guidelines of ComCom in compliance with EC guidelines.	As above, Article 45 ² (4)



Inclusion of any financial contribution obligations for services targeting the country?	Not regulated.	
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Source: Response of national expert of Georgia to European Audiovisual Observatory standardised survey

In contrast to the approach regarding linear services, the Law now includes the provisions relevant to on-demand audiovisual media services and hence aligns the national framework with the 2018 AVMS Directive in this field.

4.4.4. Rules on audiovisual commercial communications

This section looks at the rules on 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 71. 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.	Law on Broadcasting, (2004) as amended 2023, Article 63 (2 ³)
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 – closely aligned with the 2018 AVMSD in the Law on Advertising No reference is made to behaviour grossly prejudicial to the protection of the environment *** These provisions were introduced in the law in the section regarding the obligations for VSPs.	Law on Advertising (1998), as amended Article 4 (11) *** Law on Broadcasting, (2004) as amended 2023, Article 45 ⁵
ACC for the prescription of medicinal products and medical treatment shall be prohibited	Yes – partly aligned with the 2018 AVMSD. In relation to product placement under Article 69 ¹ (4). Added to the law in the amendments but only under the section regarding the obligations for VSPs.	As above, Article 69 ¹ (4) Article 45 ⁵
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD. It forbids sponsorship by companies involved in the production of products or provision of services, the advertising of	As above, Article 69



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
	which is prohibited by the Law of Georgia on Advertising.	
No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes	Yes – aligned with the 2018 AVMS.	As above, Article 69 ¹ (2)
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.	As above, Article 69 ¹ (3)
Viewers shall be clearly informed of the existence of PP in a programme	Yes – aligned with the 2018 AVMSD.	As above, Article 69 ¹ (4)
Limits on the proportion of television advertising spots and teleshopping spots: throughout the day; or during particular time periods?	Yes – aligned with the 2018 AVMSD. It includes the restriction of 20% in the time periods 6:00 to 18:00 and 18:00 to 24:00. Limits are placed that forbid the insertion of advertising in a news programme or children's programme more than once every 30 minutes (Article 63, paragraphs 13 and 14).	As above, Article 64 (2) Article 63 (13 and 14)
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Yes – aligned with the 2018 AVMSD. This restriction does not apply to announcements made by the broadcaster in connection with its own and/or independent programmes, to products derived from those programmes or directly related thereto, to sponsorship announcements and product (goods/service) placements, in connection with the programmes and audiovisual media services, and to neutral frames between programmes and advertising or teleshopping spots, and between individual advertising spots.	As above, Article 64 (2)

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

The 2022 amendments to the Law on Broadcasting (2004) further aligned the rules on ACCs with the 2018 AVMSD. The rules on product placement are supplemented by ComCom's Guidance on Product Placement.¹⁴⁷ Some of the relevant provisions can be found in the Law

¹⁴⁷ <https://www.comcom.ge/ge/regulation/broadcasting/broadcasting-sakonsultacio-dokumentebi-da-sxva-masalebi/programashi-produqtis-saqonlismomsaxurebis-gantavsebis-product-placement-saxelmdzgvanelo-rekomendaciebi1.page>.



on Advertising. However, the former amended Article 63 (para 2³) regarding surreptitious advertising is no longer present in the final adopted amendments. Although it can be found under the obligations for VSPs.

There is a similar issue regarding the prohibition of ACCs for medicinal products and treatments available only on prescription. The Law forbids these products under product placement. A broader prohibition was introduced by the amendments, but only in the section regarding the obligations for VSPs – and not within the general rules covering audiovisual media services.

4.4.5. 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 4.4.1.2 above. Provisions regarding VSPs were included in the 2022 amendments to the Law on Broadcasting.

Table 72. Obligations on video-sharing platforms regarding content

AVMSD and provisions on VSPs (Article 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 – partly aligned with the 2018 AVMSD. See discussion in the main text.	Law on Broadcasting, (2004) as amended 2023, Article 45 ⁴
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ⁵ (1 and 2)
VSPs should clearly inform users where programmes and user-generated videos contain ACC	Yes – closely aligned with the 2018 AVMSD in the Law. The Law states here that audiovisual commercial communications shall be readily recognisable as such. But does not oblige VSPs to clearly inform users.	As above, Article 1 (19)
VSPs should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Not mentioned, although likely to be introduced via secondary act/code of conduct.	As above, Article 1 (19)

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



The obligations to protect minors are included in the updated law. However, there is no reference to incitement to violence against a group of persons or member of a group of persons. In addition, the provisions do not directly refer to provocation to commit a terrorist offence, offences concerning child pornography, or offences concerning racism and xenophobia. There is a broad reference to content that “contains elements of a crime under the Criminal Code of Georgia”. The specific crimes listed in the Directive are included in the Criminal Code.

There is no clear obligation that VSPs should inform users where programmes and user-generated videos contain ACC. Obligations to reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS) are also not mentioned.

Regarding measures to be taken by VSPs and the role of the NRA, these are addressed below.

Table 73. Obligations on video-sharing platforms – measures and supervision

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.	Law on Broadcasting, (2004) as amended 2023, Article 45 ⁶ (a)
Possibility to declare the presence of ACCs in user-generated video	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ⁶ (b)
Reporting or flagging systems to report harmful content to the VSP provider	Yes – aligned with the 2018 AVMSD.	Article 45 ⁶ (c) and (d)
Age verification systems for users	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ⁶ (e)
Content rating systems for users	Not mentioned	
Parental control systems	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ⁶ (e)
Procedures for complaints to the VSP	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ⁶ (f)
Providing media literacy measures and tools and raising users' awareness of those measures and tools	Yes – aligned with the 2018 AVMSD.	As above, Article 45 ⁶ (g)
Implementation and supervision		
Protection of the personal data of minors	Yes – aligned with the 2018 AVMSD.	As above,



		Article 56 ³
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	Yes – partly aligned with the 2018 AVMSD in the Law. The Law states that “the Commission shall supervise the fulfilment of obligations provided for by law by video-sharing platform providers” rather than “assess the appropriateness of the measures”	As above, Article 45 ⁸
Are there out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and can users assert their rights before a court in relation to VSPs?	Not mentioned	
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Not mentioned	

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

With regard to the implementation of the obligations, the majority of appropriate measures in the Directive have been included in the law (with the exception of establishing a rating system).

The role of the ComCom states that the Commission shall “supervise the fulfilment of obligations provided for by law by video-sharing platform providers” rather than the role foreseen in the Directive, which is to “assess the appropriateness of the measures”.

Regarding the availability of out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and the possibility for users to assert their rights before a court in relation to VSPs, while these elements appeared to be included in earlier draft amendments, the final set of amendments shared with the European Audiovisual Observatory did not include these references.

4.4.6. Concluding remarks and summary of findings

In 2022, the Georgian Government published a Draft Law (changes to the “Law on Broadcasting” of Georgia). This Draft Law aimed to ensure alignment with the 2018 AVMS Directive. The amendments were adopted by Parliament on 22 December 2022.

Most of the general principles and key values, such as non-discrimination and the prohibition of incitement to hatred and violence, are covered in Georgian legislation via the Constitution and relevant media laws.

In the previous version of the law, this was not fully aligned with the AVMS Directive or with best European practices several issues were fully left to the self-regulatory mechanisms of broadcasters (Code of Conduct for Broadcasters), without the possibility to complain to the NRA or go to court. The amendments to the law appear to have resolved



the issue regarding self-regulation where now issues such as hate speech and the protection of minors are clearly under the regulatory remit of the ComCom.

The obligations on audiovisual media services to effectively reduce exposure of minors to ACCs for HFSS foods and for alcohol are not included in the updated version of the Law on Broadcasting. However, it is anticipated that the updated Code of Conduct for Broadcasters will deal with these requirements in the future.

The adopted amendments include the obligations regarding the accessibility of audiovisual media service providers, as outlined in the Directive.

Regarding audiovisual commercial communications, most of the content rules are aligned in the Law on Broadcasting or in the Law on Advertising.

Provisions in the current legislative framework regarding the independence of the NRA align closely with the 2018 AVMSD, and are also addressed in a specific Law of Georgia on Regulatory Bodies. However, there remain concerns regarding the procedures for election and dismissal of the members of the Commission of the NRA. These were addressed in detail in a Council of Europe Opinion (2023) that highlighted the problem that the Government selects a list of candidates to be voted on by Parliament on the basis of an open competition, but does not detail how the final list is selected and by whom. In addition, the final vote on the list in Parliament is by simple majority and implies that the list chosen by the government will be elected by the ruling parties.

Regarding, the dismissal of members of the Commission, the Council of Europe noted (among other issues) that the dismissal of members of the Board, regardless of the condition leading to dismissal (including even imprisonment), has to be agreed upon by the Parliament via a vote. This represented a further challenge to the political independence of the Commission. Feedback from the ComCom emphasised that in practice these are additional safeguards to protect Commission members from intimidation (as has happened in the past) and the votes do not interfere with the normal course of judicial or criminal proceedings.

The Law does not introduce a specific quota system regarding obligations for broadcasters in broadcasting European works, but it does align with the Directive regarding the obligations for on-demand audiovisual media services. This has been identified as an oversight to be addressed by the Parliament in the near future (requiring the addition of the word “majority” in relation to European works and obligations of broadcasters).

Regarding the obligations for video-sharing platforms, there is no reference to incitement to violence against a group of persons or member of a group of persons. In addition, the provisions do not directly refer to provocation to commit a terrorist offence, offences concerning child pornography, or offences concerning racism and xenophobia. There is a broad reference to content that “contains elements of a crime under the Criminal Code of Georgia”.

With regard to the implementation of the obligations, the majority of appropriate measures in the Directive have been included in the law (with the exception of establishing a rating system).



The role of the ComCom states that the Commission shall “supervise the fulfilment of obligations provided for by law by video-sharing platform providers” rather than the role foreseen in the Directive, which is to “assess the appropriateness of the measures”

Regarding the availability of out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and the possibility for users to assert their rights before a court in relation to VSPs, while these elements appeared to be included in earlier draft amendments, the final set of amendments shared with the European Audiovisual Observatory did not include these references.

In the feedback from the survey circulated by the European Audiovisual Observatory to a national expert with regard to the issue of freedom of expression, it was noted that there are concerns regarding the safety of journalists, with attacks being common. There is also a lack of proper investigation into attacks on journalists, which was highlighted in a recent Opinion of the European Commission¹⁴⁸ noting that intimidation and physical and verbal attacks on media professionals have increasingly taken place, especially in the context of demonstrations and election rallies. The same opinion noted that court proceedings and investigations against opposition media owners have become frequent. In particular, SLAPP lawsuits have significantly increased since 2021 and expert analysis suggests that the judicial proceedings do not follow accepted international practice in this area with regard to burden of proof, balancing of rights and protection of freedom of expression, etc.

Finally, several amendments to the Law on Broadcasting with regard to the public service broadcaster were adopted at the end of May 2023 without any public consultation. These amendments are considered by experts to have the aim of increasing control over the PSB in advance of the 2024 elections.

¹⁴⁸ EC (2022): COM(2022) 405 final Communication from the Commission to the European Parliament, the European Council and the Council - “Commission Opinion on Georgia’s application for membership of the European Union”: <https://ec.europa.eu/neighbourhood-enlargement/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf>.



4.4.7. The list¹⁴⁹ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024. List of relevant documents, reports, opinions, etc.

Table 74. Relevant documents, reports, opinions

Title	Main topics/ themes	Link if available
Georgian Democracy Initiative (GDI)- Special Report Regarding SLAPP Cases in Georgia. May 2023. By Ekaterine Subeliani and Vasil Zhizhiashvili. With the support of the USAID Rule of Law Program funded by the United States Agency for International Development (USAID) through the East-West Management Institute (EWMI).	Freedom of the Media and journalism and SLAPP cases.	
Council of Europe (2023): Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department – on the Law of Georgia on Broadcasting. Prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Sally Broughton Micova.	Review of the Law on Broadcasting as amended in 2022	
Council of Europe (2022): Technical Paper on Professional Media Regulation: European Standards, Practice and Perspectives for Georgia: Contribution and Inputs from Experts' Participation in the Seminar on "Freedom of Expression Standards and Media Content regulation: CoE and EU practices", 14-15 July 2022; and the Online Roundtable on "Professional media regulation: European standards, practice and perspectives for Georgia", 18 July 2022. Prepared by Toby Mendel and Eve Salomon	Media regulation in Georgia	
EC (2022): COM (2022) 405 final Communication from the Commission to the European Parliament, the European Council and the Council – Commission Opinion on Georgia's application for membership of the European Union	Georgia's application for EU membership, including, <i>inter alia</i> , issues related to freedom of expression	In English: https://ec.europa.eu/neighbourhood-enlargement/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf
EU4Digital (2020) supporting digital economy and society in the Eastern Partnership:	Assessment of regulatory structures	https://eufordigital.eu/wp-content/uploads/2021/0

¹⁴⁹ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



Title	Main topics/ themes	Link if available
Gap assessment of Georgia regulatory system in the field of electronic communications		4/Gap-assessment-of-Georgia-regulatory-system-in-the-field-of-electronic-communications.pdf
US Department of State (2020): 2020 Country Reports on Human Rights Practices: Georgia	Human rights including media freedom	https://www.state.gov/rereports/2020-country-reports-on-human-rights-practices/georgia/
Media Advocacy Coalition (2020): Media Environment in Georgia 2020	Media freedom, regulation, media literacy, safety of journalists	https://osgf.ge/wp-json/wi/validate/v1/file?wifile=wp-content/uploads/2021/01/Media-environment_English.pdf

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

4.4.8. Data compilation

This country report is based on information and materials supplied by the national expert Mariam Gogosashvili, Executive Director of the Georgian Charter of Journalistic Ethics.



4.5. Kosovo*¹⁵⁰ (XK)¹⁵¹ (Country report B¹⁵²)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- In contrast to other countries where the media (or audiovisual) law incorporates the establishment and functioning of a national regulatory authority (NRA), in Kosovo there is a law on the NRA that incorporates all the provisions relevant for the regulation of the audiovisual media sector (the Law on the Independent Media Commission, 2012 – IMC Law).
- A Draft Law was prepared (in 2021) to amend and update the IMC Law. According to Government plans, it was expected that the Draft Law would be presented to Parliament for approval in June 2023, following the consultation process. However, this did not happen yet. A new Draft Law is currently (status 25 September 2023) undergoing review in the Prime Minister's office.

¹⁵⁰ * All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

¹⁵¹ The country report on Kosovo incorporates the feedback received from Mirand Tafarshiku, Head of Monitoring and Analysis Division at the Independent Media Commission during the checking round with the national regulatory authorities.

¹⁵² Country report B summarises the findings of Questionnaire B in relation to Group III, which includes Kosovo. Although the details on the legislative framework of Kosovo was gathered via Questionnaire B, which did not include a range of thematic (in line with the expectations of Group III countries), the authors decided to include the provisions on audiovisual commercial communications and on VSPs as the proposed draft law in Kosovo is strongly aligned with the 2018 AVMSD regarding these issues.



- This Draft Law is closely aligned with the 2018 AVMSD and is expected to bring the legislative framework into line with the EU acquis – for example, it also covers most of the provisions relevant to video-sharing platform (VSP) services.
- Regarding general principles and key values promoted by EU law and European standards, these are strong with regard to freedom of expression and the protection of minors. The Draft Law introduces stronger obligations regarding the accessibility of audiovisual content for people with disabilities.
- In addition, the principle of transparency of media ownership is not yet fully incorporated in the legal framework as current regulations and obligations in the area of media ownership are lacking.
- The list¹⁵³ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.5.1. Introduction

Kosovo joined the Creative Europe programme in June 2018 including the Culture sub-programme and the Cross-sectoral strand.¹⁵⁴ Hence, Kosovo participated in Creative Europe 2014-2020 but not at all in the MEDIA strand. For the assessment of future participation of Kosovo in Creative Europe, this project provides information with regard to important general principles such as: the independence of the National Regulatory Authority (NRA); prohibition of censorship in the media; and the protection of key values promoted by the Audiovisual Media Services Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (hereafter referred to as the AVMS Directive or AVMSD). As a Draft Law has been prepared to align with the AVMSD, all the details of the Draft were included in this report.

According to the European Commission, Kosovo is recognised by 22 EU Member States, having declared independence from Serbia on 17 February 2008. Relations between Kosovo and the European Union are based on the Stabilisation and Association Agreement (SAA) between the EU and Kosovo from 1 April 2016.¹⁵⁵

¹⁵³ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

¹⁵⁴ <https://culture.ec.europa.eu/news/commissioner-navracsics-welcomes-kosovo-to-creative-europe>

¹⁵⁵ Stabilisation and Association Agreement (SAA) between the EU and Kosovo from 1 April 2016: <https://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>.



4.5.1.1. Relevant framework: current status and developments

The table below outlines the national legislative framework for the audiovisual media sector, including mainly those acts of most relevance to the issues addressed in this country report. It is important to note that this country report does not outline the national rules related to the entire AVMS Directive, but rather focuses 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, the independence of the national regulatory authority (NRA, the protection of minors, the promotion of the rights of people with disabilities to access audiovisual content and the transparency of media ownership).

There is an extensive range of regulatory acts of the NRA – Independent Media Commission (IMC). For the sake of clarity, only those that relate to the issues addressed in this country report are included in the table. Others may be added in the footnotes where appropriate.

Table 75. Legal framework

Title	Status	Relevance	Link
Constitution of the Republic of Kosovo Kushtetuta e Republikës së Kosovës (Albanian) Устав Републике Косово (Serbian)	In force	Fundamental rights, freedom of expression, prohibition of discrimination.	In English: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1362558264.286.pdf In Albanian: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1343117104.2078.pdf In Serbian: https://kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1352292820.2282.pdf
Law No. 04/L-044 on the Independent Media Commission 2012 (hereafter IMC Law 2012) Ligji Nr.04/L-044 per Komisionin e Pavarur per Media-2012 (Albanian) Zakon br. 04/l-044 o nezavisnoj komisiji za medije (Serbian)	2012	Law that establishes and regulates the NRA – also includes all aspects of media regulation.	In English: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1335250709.2603.pdf In Albanian: https://gzk.rks.gov.net/ActDetail.aspx?ActID=2809 In Serbian: https://kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1335250532.0606.pdf



<p>Law No. 04/L-046 on Radio Television of Kosovo-2012</p> <p>Ligji Nr. 04/L-046 per Radiotelevizionin e Kosovës-2012 (Albanian)</p> <p>Zakon br. 04/L-046 o radio-televiziji kosova (Serbian)</p>	<p>2012</p>	<p>Law on the public service broadcaster.</p>	<p><u>In English:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=281</p> <p><u>In Albanian:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=2812</p> <p><u>In Serbian:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=2812</p>
<p>Law No. 05/L-031 on General Administrative Procedure 2016</p> <p>Ligji Nr. 05/L-03 per Proceduren e Pergjithshme Administrative-2016 (Albanian)</p> <p>Zakon br. 05/L-031 o opstoj administrativnoj proceduri (Serbian)</p>	<p>2015</p>	<p>Administrative procedures.</p>	<p><u>In English:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559</p> <p><u>In Albanian:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559</p> <p><u>In Serbian:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559</p>
<p>Criminal Code of the Republic of Kosovo (Code No. 06/L-074) (2019)</p> <p>Kodi Nr. 06/L-074 – Kodi Penal i Republikës së Kosovës (Albanian)</p> <p>Zakonik br. 06/L-074 o krivičnom zakoniku republike Kosovo (Serbian)</p>		<p>Covers elements of incitement to hatred/violence.</p>	<p><u>In English:</u></p> <p>https://www.refworld.org/docid/6012e70d4.html</p> <p><u>In Albanian:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413</p> <p><u>In Serbian:</u></p> <p>https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413</p>
<p>Draft Law amending and supplementing the Law No. 04/L-44 for the Independent Media Commission 2021 (hereafter 2021 Draft Law amending the IMC Law 2012)</p> <p>Projektligji për ndryshimin dhe plotësimin e Ligjit Nr. 04/L-44 për Komisionin e Pavarur të Mediave-2021 (Albanian)</p> <p>Nacrt zakona nezavisnoj komisiji za medije (Serbian)</p>	<p>Draft</p>	<p>Draft Law to amend the law that establishes and regulates the NRA – also includes all aspects of media regulation.</p>	<p><u>In English, Albanian and Serbian:</u></p> <p>https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41259</p>



Draft Law amending and supplementing the Law No. 04/L-44 for the Independent Media Commission 2023 (hereafter 2023 Draft Law amending the IMC Law 2012)		As above	Not online
Law on Digitalisation of Terrestrial Broadcasting Transmissions No.05/L-027 Ligji për Dixhitalizimin e Transmetimeve Radiodifuzive Tokësore Nr. 05/L-027 (Albanian) Zakon Br. 05/L-027 o difitalizaciji zemaljskog radio prenosa (Serbian)	In Force	The most rational use of frequencies in order to provide diverse and quality services to citizens of Kosovo.	Albanian, English, Serbian: https://gzk.rks-gov.net/ActDetail.aspx?ActID=11021

Secondary legislation: by-laws, codes, etc. in force			
Title	Status	Relevance	Link
IMC 2021/01 Regulation on Audio and Audiovisual Media Service Providers ¹⁵⁶	In force 2021	Rules and obligations for audiovisual media services	English, Albanian, Serbian: https://kpm-ks.org/en/legjislacioni/299/akt-tet-nenligjore-ne-fuqi/299
IMC 2020/01 Regulation on distribution of Audio and Audiovisual Media Service Providers ¹⁵⁷	In force 2020	Distribution of audiovisual media services	English, Albanian, Serbian: https://www.kpm-ks.org/al/legjislacioni/299/akt-et-nenligjore-ne-fuqi/299
IMC 2018/01 Rules of Procedure of the Independent Media Commission ¹⁵⁸	In force 2018	Procurement of the IMC	In Albanian: https://www.kpm-ks.org/assets/cms/uploads/files/rregullore.pdf
IMC 2017/07 Regulation on Audiovisual Commercial Communication ¹⁵⁹	In force 2017	Audiovisual commercial communications (ACCs)	In Albanian: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1514284325.0124.pdf
IMC 2016/03 Code of Ethics for Media Service Providers ¹⁶⁰	In force 2016	Code of ethics	In Albanian: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1476189555.8908.pdf

¹⁵⁶ KPM 2021/01 Rregullore per Ofruesit e Sherbimeve Mediale Audio dhe Audiovizuale – 2021.

¹⁵⁷ KPM 2020/01 Rregullore per Shperndarjen e Ofruevse te Sherbimeve Mediale Audio dhe Audiovizuale.

¹⁵⁸ KPM 2018/01 Rregullore e Punes se Komisionit te Pavarur per Media.

¹⁵⁹ KPM 2017/07 Rregullore per Komunikimet Komeriale Audiovizuale.

¹⁶⁰ KPM 2016/03 Kodi i Etikes per Ofruesit e Sherbimeve Mediale ne Republiken e Kosoves.



IMC 2013/04 Regulation of the IMC for Issuing of Licences ¹⁶¹	In force 2013	Licensing regulation	In Albanian: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1370439533.4455.pdf
IMC 2013/01 Regulation on the Protection of Children and Minors in Audiovisual Media Services ¹⁶²	In force 2013	Protection of minors	In Albanian: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1370439037.589.pdf In English: https://www.kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1426064630.0389.doc

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

In Kosovo, Law No. 04/L-044 on the Independent Media Commission 2012 (the IMC Law 2012), which regulates the establishment and functioning of the national regulatory authority (NRA) also incorporates all the provisions relevant for the regulation of the audiovisual media sector (including the rights and obligations of audiovisual media services). The law is in the process of being amended. According to the Government plans, it was expected that the Draft Law would be presented to Parliament for approval in June 2023.

The newly elaborated Draft Law completed the public consultation stage and is currently (September 2023) undergoing review in the Prime Minister's office. Following this review, it will proceed for official approval within the Government. Afterward, it will be forwarded to the Assembly parliamentary committee (Committee on Public Administration, Local Governance, and the Media).

4.5.1.2. Definitions and alignment with the AVMS Directive

The table below provides an overview of the definitions used in the legislative framework in Kosovo and the extent to which they align with the AVMS Directive.

¹⁶¹ KPM 2013/04 Rregullore e KPM-se per dhenien e Licences.

¹⁶² KPM 2013/01 Rregullore per Mbrojtjen e Femijeve dhe te Mitureve ne Sherbimet Mediale Audio-Vizuale.



Table 76. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	The current legal framework is closely aligned with the 2010 AVMSD. It does not clarify that audiovisual media services include both linear and on-demand services. It lacks the phrase “a dissociable section” as included in the 2018 AVMSD. *** Yes – aligned with the definition in the 2018 AVMSD in the Draft Law.	IMC Law 2012 Article 2 Definitions (1.1) *** 2023 Draft Law amending the IMC Law 2012, Article 3 Definitions (1.1)
Video-sharing platform service (VSP)	Yes – aligned with the definition in the 2018 AVMSD in the Draft Law.	As above, Article 3 Definitions (1.3)
Programme	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.3) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.4)
User-generated video	Yes – aligned with the definition in the 2018 AVMSD in the Draft Law.	2023 Draft Law amending the IMC Law 2012, Article 3 Definitions (1.5)
Editorial decision	There is no definition for “editorial decision” in the current law, but the Draft Law aligns verbatim with the 2018 AVMSD.	2023 Draft Law amending the IMC Law 2012, Article 3 (1.6)
Editorial responsibility	The current legal framework is closely aligned with the 2018 AVMSD, as it lacks the phrase: “Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided.” *** The Draft Law aligns verbatim with the 2018 AVMSD.	IMC Law 2012, Article 2 (1.4) *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.7)
Media service provider	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.2) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.8)
VSP provider	The Draft Law aligns verbatim with the 2018 AVMSD.	2023 Draft Law amending the IMC Law 2012, Article 3 (1.9)



Television broadcasting or television broadcast	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.7) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.10) and (1.12)
Broadcaster	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.6) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.11)
On-demand audiovisual media service	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.9) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.21)
Audiovisual commercial communication (ACC)	Yes - the current law aligns with the 2010 AVMSD. Yes – the Draft Law aligns verbatim with the 2018 AVMSD (by referring to “user-generated video”).	IMC Law 2012,, Article 2 (1.12) *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.22)
Television advertising	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.13) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.24)
Surreptitious ACC	Yes – the current law, under the IMC Regulation on ACCs, aligns with the definition in the 2018 AVMSD. (This is replicated in the Draft Law.)	IMC 2017/07 Regulation on Audiovisual Commercial Communication Article 4. Definitions 4.15 *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.25)
Sponsorship	The current law aligns with the definition in the 2010 AVMSD. The Draft Law aligns verbatim with the 2018 AVMSD (including references to “video-sharing platform services” and “user-generated video”).	IMC Law 2012, Article 2 (1.14) *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.26)



Teleshopping	Yes – the current and Draft Law align with the definition in the 2018 AVMSD.	IMC Law 2012, Article 2 (1.15) and 2023 Draft Law amending the IMC Law 2012, Article 3 (1.27)
Product placement	The current law aligns with the definition in the 2010 AVMSD. The Draft Law aligns verbatim with the 2018 AVMSD (with references to “user-generated video”).	As above, Article 2 (1.16) *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.28)
European works	There is no definition for European works in the current law. *** Yes – the Draft Law aligns with the definition in the 2018 AVMSD.	IMC Law 2012, Article 9 (5) *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.29)
Independent producer	Not aligned with standard definition as there are no limits mentioned with regard to cross-ownership or shareholdings between a broadcaster and an independent producer. The Draft Law refers to “independent production”	IMC Law 2012, Article 2, (1.22) *** 2023 Draft Law amending the IMC Law 2012, Article 3 (1.19)
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	Yes – the IMC Code of Ethics defines material which may cause harm or constitute a violation: offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language (Article 3 (3)). This article also requires that information on the nature of such content should also be provided around the programming in order to minimise harm or offence.	IMC 2016/03 Code of Ethics for Media Service Providers Article 3 – Harmful and Offensive Content



Definition of incitement to hatred (or equivalent)	<p>Yes – Article 141 of the Criminal Code prohibits public incitement or public spreading of hatred, discord and intolerance between national, racial, religious, ethnic and other groups or based on sexual orientation, gender identity and other personal characteristics, in a manner which is likely to disturb the public order. The Article provides for fines and prison sentences for this offence depending on the severity of the action.</p> <p>***</p> <p>Article 5 (1) of the IMC Code of Ethics prohibits the encouragement or promotion, intentionally or indirectly, of any form of discrimination and intolerance and the broadcast of any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.</p>	<p>Criminal Code of the Republic of Kosovo (Code No. 06/L-074) (2019), Article 141 – Inciting discord and intolerance</p> <p>***</p> <p>IMC 2016/03 Code of Ethics for Media Service Providers</p> <p>Article 5 – Incitement to Hatred</p> <p>(This is dealt with in more detail below under section 4.5.2 General Principles.)</p>
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Source: Response of national expert of Kosovo to European Audiovisual Observatory standardised survey

With regard to definitions, the legislation currently in force is closely aligned with the 2010 AVMS Directive, and partly aligned with the 2018 AVMS Directive. The 2021 Draft Law intended to update the media legislation and align it with the EU *acquis*, is closely aligned with the 2018 AVMS Directive.

The Draft Law has incorporated the definitions relevant to video-sharing platforms (VSPs) and has updated all the relevant definitions of audiovisual commercial communications (ACCs) to include reference to VSPs and to user-generated video. Hence, when the Draft Law is adopted, the definitions will align almost entirely with the 2018 AVMS Directive. The Draft Law introduces the definition of “European works” and has a definition of “independent production” which does not align precisely with the Directive. The IMC 2016/03 Code of Ethics for Media Service Providers deals with the issues of “harmful and offensive content” (under Article 3), and incitement to hatred (under Article 5). Incitement to hatred is also addressed in the Criminal Code of Kosovo, and this is addressed in more detail below under section 4.5.2.

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

4.5.1.3.1. Jurisdiction

The current national legislative framework, outlined below, does not align with the AVMS Directive in relation to the establishment of jurisdiction, but the Draft Law amending the IMC Law updates this, and includes verbatim several of the relevant provisions in relation to the jurisdiction of VSPs.

**Table 77. Jurisdiction**

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers.	The current law is not aligned with either the 2010 AVMSD or the 2018 AVMSD. *** Yes – The Draft Law is closely aligned with the 2018 AVMSD, although there is no mention of the secondary criteria regarding satellite uplinks or satellite capacity.	IMC Law 2012, Article 4 *** 2023 Draft Law amending the IMC Law 2012, Article 5 – Jurisdiction of the IMC
Article 2 (5a) Requirement that AVMS providers inform the competent NRAs or bodies about any changes that may affect the determination of jurisdiction.	Not aligned in current law. Yes – aligned with 2018 AVMSD in the Draft law.	2023 Draft Law amending the IMC Law 2012, Article 5 (2)
Article 2 (5b) Requirement to maintain up-to-date list of the AVMS providers under national jurisdiction.	Not aligned in current law. Yes – aligned with 2018 AVMSD in the Draft Law.	As above, Article 5 (3)
Article 28a (paragraph 1-5) regarding the establishment of the jurisdiction of VSPs.	Not aligned in current law. Yes – Aligned with 2018 AVMSD in the Draft Law.	As above, CHAPTER VII Provisions Applicable to VSP Services, Article 60
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.	Not mentioned.	
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 Kosovo to European Audiovisual Observatory standardised survey

The legislation in force is not aligned with either the 2010 AVMS Directive or the 2018 AVMS Directive with regard to jurisdiction. It does state that the Independent Media Commission (IMC) shall have jurisdiction over AVMS providers which are established in, and where the editorial decisions have been issued in Kosovo; and when the audiovisual media service provider has its central office in Kosovo but the editorial decisions have been taken in EU countries or in other countries. The Draft Law updating the IMC Law aligns the provisions regarding jurisdiction with the AVMS Directive. It also includes verbatim several of the relevant provisions in relation to the jurisdiction of VSPs. The law does not require the maintenance of an up-to-date list of VSP providers.



It is worth noting that, although the issue is not examined in this country report in relation to Kosovo, the Draft Law updating the IMC Law incorporates the majority of the provisions of the 2018 AVMS Directive with regard to VSP services.

4.5.1.3.2. The principle of freedom of reception and retransmission

The current IMC Law does not include the principle of freedom of reception and retransmission. Given that there are no clear rules for the principle of freedom of reception and retransmission, there is also no clear system of derogations from this principle.

Any issues regarding the blocking of the reception of content relate more to the services under the jurisdiction of the IMC, or to the distribution companies under the jurisdiction of the IMC. Within the IMC 2020/01 Regulation on the Distribution of Audio and Audiovisual Media Services Providers there are some rules on this issue. A distributor is obliged, on becoming aware that an audio and audiovisual service that they distribute contains illegal content, to immediately stop the further distribution of the illegal content and take measures to ensure that this will not be repeated (Article 5.3).¹⁶³

However, the Draft IMC Law has introduced the principle of freedom of reception and retransmission in line with the Directive (see table below).

¹⁶³ Link: <https://www.kpm-ks.org/al/legjislacioni/299/aktet-nenligjore-ne-fuqi/299>.



Table 78. 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 – aligned with the 2018 AVMSD in the Draft Law	2023 Draft Law amending the IMC Law 2012, Article 11 – Retransmission policy, para 1
Article 3 (2) – derogations from the principle of freedom of reception and transmission.	Yes – aligned with the 2018 AVMSD	As above, Article 11, para 2-8

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

4.5.2. General principles 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 of the country report – namely non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content.

Table 79. General principles and key values

General principle/key value	Relevant provision/provisions	References
Principle of non-discrimination	<p>Yes – the Constitution, under Article 24 (2), prohibits discrimination on any grounds.</p> <p>***</p> <p>The Draft Law amending the IMC Law stipulates that audiovisual media service providers shall impartially respect the right to information, political beliefs and religious beliefs, personality, dignity and other fundamental human rights and freedoms. They shall, in particular, respect the rights, interests and moral and legal requirements for the protection of juveniles.</p> <p>***</p> <p>Under Article 5 (1) of the IMC Code of Ethics – audiovisual media service providers should not encourage or promote, intentionally or indirectly, any form of discrimination or intolerance and must not broadcast any material that</p>	<p>Constitution of the Republic of Kosovo Article 24 (2)</p> <p>***</p> <p>2021 Draft Law amending the IMC Law 2012, Article 39 (2)</p> <p>***</p> <p>IMC 2016/03 Code of Ethics for Media Service Providers</p> <p>Article 5 – Incitement to hatred</p>



	denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.	
Prohibition of incitement to hatred and incitement to violence	<p>Yes – the Constitution stipulates that organisations or activities that infringe the constitutional order, violate human rights and freedoms, or encourage racial, national, ethnic or religious hatred may be prohibited by the decision of a competent court (Article 44 (3)).</p> <p>In addition, Kosovo shall take all necessary measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their national, ethnic, cultural, linguistic or religious identity. Article 58 (3).</p> <p>***</p> <p>Article 141 (1) of the Criminal Code includes punishment of fines or imprisonment of up to five years for anyone who publicly incites or publicly spreads hatred, discord and intolerance.</p> <p>***</p> <p>As already outlined above Article 5 (1) of the IMC Code of Ethics outlines the obligations of audiovisual media service providers not to encourage or promote any form of discrimination or intolerance, and not to broadcast any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.</p> <p>Article 5 (2) prohibits the use of any personal status ground to be used in such a way that individuals will be placed in a denigrating or unfavourable position, or to be ridiculed or mocked. Article 5 (3) forbids the use on audiovisual media services of denigrating language expressions, with the purpose of harming or threatening an individual or group.</p> <p>Audiovisual media services must ensure that they use proper terminology, suitable and acceptable to the category of people with disabilities (Article 5 (4)).</p> <p>Article 5 (5) prohibits the broadcast of content that incites hatred and inequality and that may result in criminal or violent actions against an individual or a group. Article 5 (6) prohibits the broadcast of programme content that incites hatred (on the basis of any grounds protected in the Constitution).</p> <p>Any references to an individual’s affiliation (on the basis of any grounds protected in the Constitution) can be made only in cases where this information is directly relevant to the event being reported (Article 5 (7)). Finally, Article 5 (8) prohibits the broadcast of programme content that incites riots or rebellion.</p> <p>***</p> <p>Yes – the Draft Law amending the Law on IMC specifically addresses these issues. Under Article 39 (6), audiovisual media service providers should be guided by a range of principles including: prohibiting broadcasts that incite intolerance</p>	<p>Constitution of Republic of Kosovo, Article 44 - [Freedom of Association</p> <p>Article 58 - Responsibilities of the state</p> <p>***</p> <p>Criminal Code of the Republic of Kosovo (Code No. 06/L-074) (2019), Article 141 – Inciting discord and intolerance</p> <p>***</p> <p>IMC 2016/03 Code of Ethics for Media Service Providers</p>



	<p>among citizens and prohibiting broadcasting that incites or justifies violence.</p> <p>Under Article 46, audiovisual media services shall not contain: any incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds protected in the Constitution.</p>	<p>***</p> <p>2023 Draft Law amending the IMC Law 2012,</p> <p>Article 39 (6)</p> <p>Article 49 (4.1)</p>
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia; incitement to terrorism</p>	<p>The Criminal Code deals with the distribution of child pornography under Article 232 (2): whoever sells, distributes, promotes, displays, transmits, offers or makes available child pornography shall be punished by imprisonment of 3 to 10 years.</p> <p>***</p> <p>The IMC Code of Ethics prohibits the broadcast of any material which promotes or incites crime and criminal activities or that contains the risk of causing harm that can result in death, injury, damage to property or any other form of violence (Article 3 (1)).</p> <p>***</p> <p>Yes – the Draft Law amending the Law on IMC specifically addresses these issues under Article 39.</p> <p>It is prohibited for audiovisual media service providers to violate the constitutional order, sovereignty and national integrity Article 39 (3). Audiovisual media service providers should be guided by a range of principles including: prohibiting broadcasts that incite intolerance among citizens and prohibiting broadcasts that incite or justify violence (39 (6)).</p> <p>Under Article 49, audiovisual media services shall not contain: any incitement to violence or hatred (4.1); or any direct or indirect public provocation to commit a terrorist offence (4.2).</p> <p>The Draft Law also incorporates the obligations on VSPs., regarding the protection of the public from content the dissemination of which constitutes an activity which is a criminal offence under the Criminal Code of the Republic of Kosovo, public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia (Article 58 (1) 1.3).</p>	<p>Criminal Code of the Republic of Kosovo (Code No. 06/L-074) (2019)</p> <p>Article 232(2)</p> <p>***</p> <p>IMC 2016/03 Code of Ethics for Media Service Providers</p> <p>Article 3(1)</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Article 39 (3), 39(6),</p> <p>Article 49 – The duties and responsibilities of a Media Service Provider (4.1) and (4.2)</p> <p>Chapter VII</p> <p>Provisions applicable to video-sharing platform services</p> <p>Article 61 (1) 1.3</p>

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

The principles of non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content are covered in the legislative framework, as outlined above. Non-discrimination is addressed under the Constitution and within the IMC Code of Ethics for audiovisual media service providers. In addition, the Draft Law amending the IMC Law incorporates this principle. Incitement to hatred and incitement to violence are



addressed in the Constitution, by the Criminal Code and the IMC Code of Ethics for media service providers. The IMC code has detailed rules concerning incitement to hatred.

The Draft Law amending the IMC Law specifically addresses these issues – prohibiting broadcasts that incite intolerance among citizens, prohibiting broadcasting that incites or justifies violence and prohibiting content that incites violence or hatred directed against a group of persons or a member of a group. The prohibition of criminal content is covered under the Criminal Code and the IMC Code of Ethics for media service providers. These issues are addressed comprehensively in the Draft Law amending the IMC Law – in relation to VSPs and their obligation to protect the public from such content.

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

Freedom of expression, freedom of the media, and prohibition of censorship are all dealt with in the legislative framework in Kosovo in the Constitution; they are also included in the objectives of the NRA in the IMC Law.

Table 80. Freedom of expression

General principle/ key value	Relevant provision/provisions	References
Freedom of expression/Freedom of the Media/Prohibition of censorship	Yes – Freedom of expression (Article 40) and freedom of the media (42) are guaranteed in the Constitution. Article 41 guarantees the right to access public documents. Article 42 also prohibits censorship and guarantees a right of correction of information. With regard to both freedom of expression (Article 40) and freedom of the media (Article 42), it is emphasised that they can be limited only when it is necessary to prevent the encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.	Constitution of the Republic of Kosovo Articles 40, 41, 42
Freedom of expression/promotion of pluralism	Under the IMC Law, Article 9 stipulates that the broadcasting policy defined by the IMC shall be in accordance with recognised international broadcasting and human rights standards, the relevant EU legislation and especially the AVMS Directive, having full respect for democracy and the rule of law and the protection of the right to freedom of expression. Article 5 outlines the duties of the IMC and these include the objective to support the freedom and pluralism of audiovisual media services.	IMC Law, 2012 Article 9, Article 5
Freedom of the Media in the context of insult and defamation	The general provisions of the Civil Law against Insult and Defamation (under Articles 1 and 2) stipulate that this Law should be interpreted so as to ensure that the application of its provisions maximises the principle of freedom of expression in accordance with the European Convention for the Protection of	Civil Law No. 02/L-65 Against Insult and Defamation Chapter 1,



	Human Rights and Fundamental Freedoms, as elaborated in the case law of the European Court of Human Rights.	Articles 1 and 2
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Source: Response of national expert of Kosovo to European Audiovisual Observatory standardised survey

Aside from the provisions in the Constitution and the IMC Law, the Civil Law Against Defamation and Insult states that implementation of said law should, *inter alia*, avoid placing unreasonable limits on freedom of expression. More importantly, pluralism is guaranteed while censorship is prohibited. In addition, the Constitution guarantees the right of access to information. Although Kosovo is not a member of the Council of Europe, the Constitution obliges national authorities to implement the European Convention on Human Rights and the case law of the European Court of Human Rights, and courts must give priority to the latter in the event of a conflict.¹⁶⁴

The 2023 Report of the European Commission recommended that Kosovo should in particular:

improve the institutional cooperation and response of key institutions to attacks against journalists and other forms of undue pressure, including by enhancing the prosecutorial, judicial and law enforcement authorities' capacity to handle cases concerning the right to freedom of expression and information;
review the Law on radio and television to ensure sustainable funding preserving its independence; review the Law on the Independent Media Commission to update its powers, including regarding audiovisual media, in line with the Audiovisual Media Services Directive;
*increase the availability of data on the audiovisual market, especially on media ownership.*¹⁶⁵

Freedom House, in their 2023 report on Kosovo, stated that the constitution guarantees press freedom, and a variety of media outlets operate in Kosovo. However, there are cases of undue influence on editorial lines, including at Radio Television Kosovo (RTK), the public broadcaster. Journalists report harassment and intimidation, particularly on social media.¹⁶⁶ A Council of Europe report from 2022, written in cooperation between the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists and partner organisations, discussed Kosovo. The report also noted the data from the Association of Journalists with regard to threats and other media freedom violations, including physical attacks, legal threats initiated by prosecutors and smear campaigns. The authors expressed regret that impunity in cases of assassinated journalists continues and there has been “no meaningful progress on investigations of journalists” killed between 1998 and 2005.¹⁶⁷

¹⁶⁴ “Constitution of Republic of Kosovo” Article 22 [Direct Applicability of International Agreements and Instruments].

¹⁶⁵ Kosovo 2023 Report, European Commission, https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf.

¹⁶⁶ Kosovo, Freedom House, Freedom in the world 2023, <https://freedomhouse.org/country/kosovo/freedom-world/2023>.

¹⁶⁷ Defending Press Freedom in Times of Tension and Conflict, Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2022 <https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>.



The report also referred to the election and approval by Parliament the Assembly of the new board of the public broadcaster Radio Television of Kosovo (RTK) on 6 December 2021. The recruitment process and composition of the board were praised nationally and internationally. The European Centre for Press and Media Freedom, the International Press Institute and the European Federation of Journalists welcomed the selection and called it a “principled and professional selection process”.¹⁶⁸

As can be seen from the above, the various assessments carried out by international organisations and experts regarding the exercise of the right to freedom of expression and media freedom in Kosovo are . Kosovo has a relatively free and independent media system. According to the national experts, journalists benefit from free legal aid, which is important with regard to what are known as SLAPPs (Strategic Lawsuits Against Public Participation). However, there are still challenges in relation to the safety of journalists, and to the extent to which the government and business interests exert undue influence on the editorial lines of media outlets.

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

The national regulatory authority (NRA) for the audiovisual sector is the Independent Media Commission (IMC). The IMC regulates the broadcasting frequencies in Kosovo, issues licences to public and private broadcasters, establishes and implements broadcasting policies and exercises other competencies as set forth by law.

Table 81. Independence of the National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government.	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p> <p>The Constitution under Article 141 guarantees the independence of the IMC (paragraph 1). It establishes that members of the IMC shall be elected in a transparent process in accordance with the law (paragraph 2).</p> <p>***</p> <p>Reiterated under the IMC Law: the IMC Commission shall be an independent body (Article 3).</p> <p>Article 6 stipulates that members and staff of the IMC shall not receive instructions from any person or other entity, including governmental entities. The independence of the IMC shall be respected at all times and no person or entity shall be permitted</p>	<p>Constitution of the Republic of Kosovo</p> <p>Article 141 (1 and 2)</p> <p>***</p> <p>IMC Law, 2012, Article 3 and Article 6</p> <p>***</p>

¹⁶⁸ Defending Press Freedom in Times of Tension and Conflict, Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2022 <https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>.



	<p>to influence any of the members of the IMC in the course of exercising their duties.</p> <p>***</p> <p>Independent Media Commission shall be an independent body, responsible for the regulation, management, and oversight of the broadcasting frequency spectrum. Article 4 (1):</p> <p>1. IMC enjoys organizational, administrative and financial independence in the course of exercising its duties.</p> <p>2. Members and staff of the IMC shall not receive instructions by any person or other entity, including the governmental entities. (Article 7)</p>	<p>2023 Draft Law amending the IMC Law 2012, Article 4 (1)</p> <p>Article 7</p>
NRAs should exercise their powers impartially and transparently.	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p> <p>Article 6 above outlines impartiality requirements.</p> <p>Article 10 requires that members of the IMC shall be objective and impartial in exercising their functions.</p> <p>Article 7 focuses on transparency, requiring the IMC to: issue licences in a transparent manner (paragraph 1); ensure the public have access to documents; and have all IMC meetings be open to public.</p> <p>Article 8 requires public consultations on the strategy, licensing plan and sub-legal acts.</p> <p>Article 37 emphasises that members of the Appeals Board (of the IMC) should be individuals with impartiality and integrity.</p> <p>***</p> <p>Article 8 (1) requires that the IMC, through a transparent process, shall give an opportunity to the public to have access to licences and sub-legal acts issued by the IMC, as well as to public decisions resulting therein.</p> <p>The IMC shall ensure the public have access to documents (Article 8 (2))</p> <p>All IMC meetings should be open to the public (Article 8 (3)).</p> <p>Article 9 requires public consultations on the strategy, licensing plan and sub-legal acts.</p>	<p>IMC Law, 2012, Article 6, Article 10, Articles 7 and 8, Article 37</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Article 8 (1)</p> <p>Article 8 (2)</p> <p>Article 8 (3)</p> <p>Article 9</p>
A clear definition of the competencies and powers of the NRAs should be outlined in the law.	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p> <p>The competencies and powers of the IMC are outlined in detail under Article 3.</p> <p>***</p> <p>The competencies and powers of the IMC are outlined in detail under Article 4.</p>	<p>IMC Law, 2012, Article 3 – Powers of the IMC</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Article 4</p>
NRAs should have adequate financial and human resources and	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p>	<p>IMC Law, 2012,</p>



<p>enforcement powers to carry out their functions, and have their own budgets.</p>	<p>According to Article 45, the IMC shall be funded by the budget of Kosovo. The IMC shall have its own budget line which shall guarantee its independence, and these resources shall be permitted to be used in accordance with a plan drafted in advance for the development of its regular annual activities. (45 (1)). The IMC may receive contributions from donors in compliance with applicable legislation and they should not influence the IMC's independence (45 (2)).</p> <p>***</p> <p>Article 62 (1) has the same text regarding budget as the current law.</p> <p>Article 62 (2) has the same text regarding donors as in the current law.</p>	<p>Chapter VII Funding of the IMC</p> <p>Article 45 Sources of Funding</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Chapter VIII Funding of the IMC</p> <p>Article 62 Sources of Funding</p> <p>Article 52 (1) and (2)</p>
<p>Clear conditions and (transparent and non-discriminatory) procedures for the appointment and dismissal of the heads of NRAs/members of governing bodies are laid out in the law.</p>	<p>Yes – aligned with the 2018 AVMSD in the current and Draft Law.</p> <p>Article 10 outlines the composition of the IMC, the professional requirements, and the need to ensure a multi-ethnic and gender-diverse Commission.</p> <p>Article 11 outlines the procedure for selection of the Commission (selected by parliamentary committee and voted by Parliament). Article 12 outlines the provisions regarding non-compliance and conflict of interest. Article 13 outlines the terms of office.</p> <p>Article 14 deals with removal from the IMC and the conduct of members. Finally, the appointment of the Chief Executive Officer shall be done in accordance with the provisions of the legislation on the civil service (Article 18).</p> <p>***</p> <p>The same provisions are included in: Article 12 on the composition of the IMC, Article 13 regarding the procedure for selection, Article 14 on non-compliance, Article 15 regarding terms of office. Article 16 deals with removal from the IMC and the conduct of members. Article 20 covers the appointment of the Chief Executive Officer.</p>	<p>IMC Law, 2012, Articles 10, 11, 12, 13, 14 and 18</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Articles 12, 13, 14, 15, 16 and 20</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>Chapter 6 deals with the Appeals Board, their responsibilities, composition, selection, issues of conflict of interest, term of office, removal and conduct (Articles 36-41). Articles 42-44 deal with the procedures of the Appeal Board, the filing of complaints, and the decisions of the Appeal Board. Decisions of the Appeals Board shall be final, subject to the procedural review of the Supreme Court of Kosovo in accordance with the applicable law (Article 44 (2)).</p>	<p>IMC Law, 2012, Articles 36, 37, 38, 39, 40, 41, 42, 43 and 44</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Articles 51, 52,</p>



	*** Chapter 6 deals with the Appeals Board, (as in the current Law) (Articles 51-56). Articles 57-59 deal with the procedures of the Appeal Board, the filing of complaints, and the decisions of the Appeal Board (as in the current law).	53, 54, 55, 56, 57, 58, 59
Provisions in the law that support cooperation between NRAs.	Not mentioned in current or draft law.	

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

The independence of the NRA – the Independent Media Commission – is enshrined in the Constitution. As the table above indicates, the provisions in the current law (and the Draft Law as there are no changes) all align with the basic requirements laid out in the 2018 AVMS Directive. The only element that is absent concerns provisions that support cooperation between regulators. The provisions are rather detailed with, for example, an article dealing with the budget including the stipulation that while the IMC shall be funded by the budget of Kosovo, it shall have its own budget line which should guarantee its independence.

According to the national experts, until 2021, the composition of the IMC included individuals having direct or indirect connections to political parties. The experts cite the findings of the Traffic Lights Report¹⁶⁹ which outlined that, following changes to the law in 2012, the IMC was criticised for being influenced by political parties or economic lobbies. Parliament had gained the right to select the IMC members and a parliamentary *ad hoc* committee consisting of representatives of all political parties interviewed candidates and voted according to political interests.¹⁷⁰ However the national experts also noted that, in 2022, two independent experts were elected as members of the IMC, which is a promising sign of a more independent IMC in the future.

According to the European Commission Report of 2023:

Implementation of existing legislation remains insufficient. During the reporting period, the Independent Media Commission (IMC) was largely dysfunctional due to the lack of quorum, including in the Media Appeals Board. The IMC Board has not been functional since March 2021, as the mandate of one of the members expired and the Assembly failed to appoint a new member until May 2023.¹⁷¹

4.5.2.3. The protection of minors

This section outlines 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 audiovisual media services to protect minors from harmful content, obligations to protect

¹⁶⁹ Traffic Lights Report, 2017, TACSO, https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-03/media_traffic_lights_report_kosovo.pdf.

¹⁷⁰ Ibid.

¹⁷¹ Kosovo 2023 Report, European Commission, [760aacca-4e88-4667-8792-3ed08cdd65c3_en \(europa.eu\)](https://ec.europa.eu/press-and-communications/media/2023/04/2023-report-kosovo)



minors from harm in the context of audiovisual commercial communications and obligations with regard to prohibited/restricted advertising.

Table 82. Protection of minors

AVMSD and the protection of minors (Articles 6a, 9, and 11)	In line with AVMSD	References
<p>Obligations to protect minors from harmful content, via a watershed/scheduling and age verification tools or other technical measures</p>	<p>Yes – closely aligned with the 2018 AVMSD.</p> <p>The IMC Law outlines the role of the IMC in ensuring that television broadcasters take appropriate measures to protect minors from harmful content.</p> <p>***</p> <p>These rules, obligations and measures are detailed in the IMC regulation on the protection of minors, and it determines the manner of categorization of content, methods of warning, as well as time slots for broadcasting of the programming.</p> <p>The regulation does not mention age verification tools or other technical measures.</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD in the draft law but only in relation to VSPs. The Draft Law amending the IMC Law includes age verification systems for users of VSPs as a measure for the protection of minors (Article 61 (6.6)).</p>	<p>IMC Law, 2012, Article 33</p> <p>***</p> <p>Regulation on the protection of children and minors in audiovisual media services, IMC 2013/01.</p> <p>***</p> <p>2023 Draft Law amending the IMC Law 2012, Article 45 (paras 1-7)</p> <p>Article 61 (6.6)</p>
<p>Prohibition against the commercial use of personal data of minors collected when implementing these measures</p>	<p>Not aligned with the 2018 AVMSD in the current law.</p> <p>BUT aligned in the Draft Law, Article 45 (6).</p>	<p>2023 Draft Law amending the IMC Law 2012, Article 45 (6)</p>
<p>Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)</p>	<p>Yes – aligned with 2018 AVMSD in a regulation.</p> <p>The regulation provides categorisation for types of content and regulates the use of signs and pictograms for warning viewers regarding the different categories of content.</p>	<p>Regulation on the protection of children and minors in audiovisual media services, IMC 2013/01, Article 5</p>
<p>Bans or prohibitions (or limitations) on 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, but not completely with the 2018 AVMSD. Article 27 (5) prohibits all forms of ACC for cigarettes and other tobacco products. It does not mention e-cigarettes.</p> <p>Yes – the current law is aligned with the 2018 AVMSD regarding alcohol. The law includes provisions to reduce the exposure of minors to ACCs for alcoholic beverages (Article 27 (13.1))</p>	<p>IMC Law, 2012, Article 27 Article 27 (5) Article 27 (13.1)</p>



	and other rules regarding the presentation of alcohol in ACCs. *** The Draft law aligns with the provisions of the 2018 AVMSD by including a reference to e-cigarettes.	*** 2023 Draft Law amending the IMC Law 2012 Article 41 (1.4)
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – aligned in the current legislation with the 2018 AVMSD.	IMC Law, 2012, Article 27 (8) *** 2023 Draft Law amending the IMC Law 2012 Article 41 (1.7)
Effective reduction of the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Not mentioned in the current laws or regulations on ACCs. *** The Draft Law aligns with the provisions of the 2018 AVMSD (Article 41 (3)).	2023 Draft Law amending the IMC Law 2012, Article 41 (3)
Prohibition against product placement in children's programmes	Yes – aligned with 2018 AVMSD.	IMC Law, 2012, Article 32

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

Currently, the legislative framework is aligned with the 2010 AVMS Directive and partly aligned with the 2018 AVMS Directive as regards the protection of minors. Areas that are absent include the prohibition of commercial use of the personal data of minors in the context of age verification systems. In fact, age verification systems are not mentioned even in relation to on-demand services. This is understandable given the fact that the IMC Law dates from 2012, and the regulation on the protection of minors from 2013.

The Draft Law amending the IMC Law, when adopted, will update the legislation to align with the 2018 AVMSD and with developments regarding changes in technology and in the consumption of audiovisual content. The Draft Law addresses the issue of effectively reducing the exposure of children to ACCs for foods high in fat, salt or sugar (HFSS foods) and also some small details such as the inclusion of e-cigarettes. As noted above, the Draft Law incorporates the majority of the provisions of the 2018 AVMS Directive with regard to VSPs. Hence the provisions relative to the protection of minors on VSPs are also included.

According to the national expert, the main obstacle to a strong implementation of the legislation on the protection of minors is a lack of human resources at the IMC, whereby the small number of media monitors within the regulator make it very difficult to monitor this issue.



With regard to media literacy initiatives, there are several civil society organisations such as the Coalition of NGOs for Child Protection in Kosovo (KOMF)¹⁷² who organise regular activities with the media on the issue of the protection of children from harmful content in media. In addition, the Council of Europe, under the JUFREX project,¹⁷³ has organised events in Kosovo addressing this issue, including a one-day training session for journalists, students and civil society activists on the protection of minors in the media on 12 July 2021 entitled “The protection of children and minors, and media ethics”.¹⁷⁴

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

The revised 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 services are made “continuously and progressively more accessible”.

Table 83. Accessibility

AVMSD and the accessibility of audiovisual media services (Article 7)	In line with AVMSD	References
Ensuring – without undue delay – that services provided by media service providers are made continuously and progressively more accessible.	The current law is in line with the 2010 AVMSD requiring only that AVMS providers be “encouraged” to make their services gradually accessible to persons with disabilities. *** The Draft Law aligns (verbatim) with the provisions of the 2018 AVMSD.	IMC Law, 2012, Article 34 *** 2023 Draft Law amending the IMC Law 2012, Article 47 (1)
Reporting to the NRA Developing action plans in this area and should communicating these to the NRAs	Yes – the Draft Law aligns (verbatim) with the provisions of the 2018 AVMSD regarding reporting.	As above, Article 47 (2) and (3)

¹⁷² <https://komfkosova.org/komf-awards-annual-prizes-in-journalism-and-annual-acknowledgements-friend-of-children-with-focus-on-childrens-rights-and-protection/?lang=en>.

¹⁷³ <https://www.coe.int/en/web/pristina/reinforcing-judicial-expertise-on-freedom-of-expression-and-the-media-in-south-east-europe-jufrex>.

¹⁷⁴ https://www.coe.int/en/web/freedom-expression/kosovo-/-/asset_publisher/BOuz7MtyHVA4/content/jufrex2-protection-of-children-and-minors-and-mediaethics?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Ffreedom-expression%2Fkosovo-%3Fp_p_id%3D101_INSTANCE_BOuz7MtyHVA4%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_pos%3D2%26p_p_col_count%3D3.



	Yes – the IMC should encourage the development of accessibility action plans, and communicate these to the IMC.	
States should provide a public online point of contact for providing information and receiving complaints.	Yes – the Draft Law aligns with the provisions of the 2018 AVMSD. The IMC is responsible for this.	As above, Article 47 (4)
Emergency information should be in accessible formats.	Yes – The Draft Law aligns with the provisions of the 2018 AVMSD. The IMC is responsible for this.	As above, Article 47 (5)

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

While the current law aligns with the 2010 AVMS Directive on the obligations regarding the promotion of the rights of people with disabilities to access audiovisual content, the Draft Law amending the IMC Law is aligned with the 2018 AVMS Directive. The assumption of the national experts is that a lack of human resources has, to date, led to non-implementation of these obligations.

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

The revised AVMS Directive emphasises (recital 15) that “[t]ransparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems”. The AVMS Directive requires a minimum of public information about services (Article 5), and national lists of media services (Article 2). This section outlines the legislative framework regarding transparency of ownership.

Table 84. Transparency of media ownership

AVMSD and transparency of media ownership (Article 5, Article 2)	In line with AVMSD	References
Requirement for service 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.	No – the current legal framework is not aligned with the 2018 AVMSD. Yes - aligned with the 2018 AVMSD in the Draft Law, where the requirement to provide public and accessible information, i.e.: name; the address at which it is established; the email address or website; the state having jurisdiction over it and the competent NRA, are included in Article 49.	2023 Draft Law amending the IMC Law 2012, Article 49 (1)
Requirement for states to establish and maintain up-to-date lists of the national media service providers	Although there is no specific requirement in the current law, the IMC has always maintained up-to-date lists of the national audiovisual media service providers.	As above, Article 5 (3)



	** Yes - aligned with the 2018 AVMSD in the Draft Law, as specified in Article 5.3, obliging the NRA to establish and maintain an up-to-date list of audiovisual media service providers, and to indicate on which of the criteria their jurisdiction is based.	
Other national legislation/regulation/rules regarding transparency of media ownership	Yes – closely aligned with the 2018 AVMSD. There is a requirement to provide to the IMC the address, telephone, fax or other contact information; details of the Senior Management including the director, news director and technical director; and the identity of owners listed in the licence application who own more than 10% of shares in an audiovisual media service registered as a share company.	General Terms and Conditions of the IMC Licence – Part One Article 6

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

The current media legislation in Kosovo does not specifically cover media ownership transparency or media concentration. The IMC initially published the Draft Regulation on Media Ownership Transparency and Concentration for public comment on 26 December 2018. The first public discussion regarding this draft regulation was held on 4 November 2020 in cooperation with the Council of Europe. There was no indication as to whether the drafting had been preceded by comprehensive analyses of the media industry and/or relevant legislative frameworks, which could be beneficial in the determination of all relevant provisions. There have been two reviews of this regulation carried out in the context of the Council of Europe and European Union JUFREX project.¹⁷⁵ To date, there is as yet no new version of the regulation available for public consultation. The current IMC Law, and the Draft Law amending the IMC Law, both include under the Duties and Responsibilities of the IMC a principle whereby the IMC shall support the freedom and pluralism of audiovisual media services (under Article 5 (5.3) and Article 6 (6.3) respectively).

4.5.2.6. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works, achieved by placing quota requirements on broadcasters (Article 16) and requirements on broadcasters that support the independent production sector (Article 17). Relevant definitions were examined above. The tables below outline the extent to which the national framework aligns with the obligations as outlined in the 2018 AVMS Directive.

¹⁷⁵ Including JUFREX (2021): Technical Paper – Review of Updated Draft Regulation on “Ownership and Concentration of Audiovisual Media Service Providers of Kosovo”** prepared by: Jean-François Furnémont and Deirdre Kevin.

**Table 85. 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 – partly aligned with the 2018 AVMSD The Broadcasting Policy shall promote European works (Article 10 (4)) Article 10 (8). The IMC shall ensure that audiovisual media services and on demand service providers which are media services under its jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works of which at least 5% must be of Kosovar origin.	2023 Draft Law amending the IMC Law 2012, Article 10 – Broadcasting Policy Paras 4 and 8
Exceptions to this rule.	Yes – aligned with the 2018 AVMSD The obligation shall not apply to audiovisual media service providers with local and regional coverage and thematic audio and audiovisual media service providers.	As above, Article Article 10 (7)
Rules where a minimum percentage of content (for example 10%) should be European works created by producers who are independent of broadcasters.	IMC shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters... (Article 10 (6)) This should should be achieved progressively, on the basis of suitable criteria..	As above, Article Article 10 (6)

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

The Draft IMC Law has introduced a system related to the promotion of European Works with a quota for audiovisual media services of 30%. A quota of 10% of European works is introduced and this is directly linked to independent producers.

The 2018 AVMS Directive also increased the obligations of non-linear on-demand audiovisual services regarding the promotion of European works (Article 13).

**Table 86. Promotion of European works on on-demand audiovisual services**

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Requirement that AVMS providers of on-demand AVMS secure at least a 30% share of European works in their catalogues and ensure prominence of those works.	Yes – aligned with the 2018 AVMSD in the Draft Law Article 10 (8) introduces the 30% quota and the prominence rule. Article 10 (8). IMC shall ensure that audiovisual media services and on demand service providers which are media services under its jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works of which at least 5% must be of Kosovar origin.	2023 Draft Law amending the IMC Law 2012, Article 10 – Broadcasting Policy Para 8
Exemptions for AVMS providers with a low turnover or a low audience?		Not mentioned
Reference to European Commission guidelines on a) the calculation of the share of European works, and b) definitions of low audience and low turnover of services?		Not mentioned
Financial contribution obligations for services targeting the country?	Article 10 (9). IMC shall ensure that the providers of on-demand audiovisual media services, who offer services in the Republic of Kosovo, share a certain percentage of their income realized in the market of the Republic of Kosovo, in order to provide financial contribution to the Kosovar works. This process will be developed via a by-law of the IMC (paras 10 and 11)	As above, Article 10 (9, 10, 11)

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

The Draft Law on the IMC introduces obligations for video-on-demand services. The Draft Law also will place obligations on providers of on-demand audiovisual media services, who offer services in the Republic of Kosovo, to contribute to Kosovar works. It is not entirely clear if this includes foreign services – but the phrase “offer services in Kosovo” suggests that it does.

4.5.3. Rules on audiovisual commercial communications

Although the details on the legislative framework of Kosovo was gathered via Questionnaire B, which did not include a range of thematics (in line with the expectations



of Group III countries), the authors decided to include the provisions on audiovisual commercial communications and on VSPs as the proposed draft law in Kosovo is strongly aligned with the 2018 AVMSD regarding these issues.

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 the rules regarding prohibited ACC in relation to certain goods and services.

Table 87. 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 Law and the Draft Law ACC must be immediately recognisable; surreptitious ACC is prohibited; as is the use of subliminal techniques in ACCs.	IMC Law, Article 27 (2) and (3) 2023 Draft Law amending the IMC Law 2012, Article 41 (1.1), (1.2)
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 Law and the Draft Law. The Draft Law applies the provisions verbatim.	IMC Law, Article 27 (2) and (4) 2023 Draft Law amending the IMC Law 2012, Article 41 (1.3)
ACC for the prescription of medicinal products and medical treatment shall be prohibited.	Yes – aligned with the 2018 AVMSD in the current Law and the Draft Law.	IMC Law, Article 27 (12) 2023 Draft Law amending the IMC Law 2012, Article 41 (1.6)
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 Law and the Draft Law The Laws prohibit sponsorship by companies the main activity of whom is manufacturing or purchase of tobacco or other tobacco products, and limits the sponsorship by those manufacturing medical products. No sponsorship in news and current events, it is prohibited to show sponsor logos during children’s programmes and religious programmes	IMC Law, Article 31 (2), (3), (4), (5) 2023 Draft Law amending the IMC Law 2012, Article 43 (1- 6)
No product placement (PP) in news, current affairs, consumer affairs, religious programmes or children's programmes.	Yes – aligned with the 2010 AVMSD in the current Law *** Yes – aligned with the 2018 AVMSD in the Draft Law	IMC Law, Article 32 (1), (2). ***



		2023 Draft Law amending the IMC Law 2012, Article 44 (1),
PP should not affect the responsibility or editorial independence of the AVMS provider; it should not directly encourage the purchase or rental of the product; nor should it give undue prominence to the product.	Yes – aligned with the 2018 AVMSD in the current Law and the Draft Law	IMC Law, Article 32 (3) 2023 Draft Law amending the IMC Law 2012, Article 44 (2.1), (2.2), (2.3)
Viewers shall be clearly informed of the existence of PP in a programme.	Yes – aligned with the 2018 AVMSD in the current Law and the Draft Law	IMC Law, Article 32 (3) 2023 Draft Law amending the IMC Law 2012, Article 44 (2.4)
Limiting the proportion of television advertising spots / teleshopping spots throughout the day, or during particular time periods?	Yes – aligned with the 2018 AVMSD in the Draft Law	2023 Draft Law amending the IMC Law 2012, Article 42 (8)
Are there exceptions to these rules (on limits of volume), for example for self-promotion, sponsorship or PP?	Yes – aligned with the 2018 AVMSD in the Draft Law	2023 Draft Law amending the IMC Law 2012, Article 42 (9)

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

The current legal framework in Kosovo as regards ACCs is closely aligned with the 2018 AVMS Directive. The proposed draft Law is fully aligned with the 2018 AVMS Directive.

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

Although the details on the legislative framework of Kosovo was gathered via Questionnaire B, which did not include a range of thematics (in line with the expectations of Group III countries), the authors decided to include the provisions on audiovisual commercial communications and on VSPs as the proposed draft law in Kosovo is strongly aligned with the 2018 AVMSD regarding these issues.

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 4.5.1.2 above. The establishment of the jurisdiction of VSPs was covered under section 4.5.1.3.1 above.



Table 88. Obligations on video-sharing platforms regarding content (VSPs)

The AVMSD and provisions on VSPs 28b	In line with the AVMSD	References
Protecting minors from harmful content in programmes, user-generated videos and ACCs; protecting the general public from programmes, user-generated videos and ACCs containing incitement to violence or hatred as well as from criminal content: and protection against illegal content – provocation to commit a terrorist offence; child pornography; racism and xenophobia.	Yes – the draft follows the provision in the 2018 AVMSD almost verbatim. However the duties and responsibilities are addressed to the IMC rather than the VSPs. IMC shall ensure that videosharing platform providers under its jurisdiction and those that provide services to the citizens of the Republic of Kosovo take appropriate measures.. etc.	2023 Draft Law amending the IMC Law 2012, CHAPTER VII Article 61 (1)
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others.	Yes – the draft follows the provision in the 2018 AVMSD almost verbatim.	Article 61 (2)
VSPs should clearly inform users where programmes and user-generated videos contain ACC.	Yes – the draft follows the provision in the 2018 AVMSD almost verbatim.	Article 61 (2)
VSP should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).	IMC shall encourage the use of and the fostering of self-regulation through codes of conduct	Article 61 (3)

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

The proposed Draft Law aligns directly with the AVMS Directive. However, the duties and responsibilities are addressed to the IMC rather than the VSPs. The Law does not express obligations of the VSPs but rather places a duty and obligation on the IMC to ensure that video-sharing platform providers under its jurisdiction and those that provide services to the citizens of the Republic of Kosovo take appropriate measures to protect minors etc.

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

**Table 89. Obligations on video-sharing platforms – measures and supervision (VSPs)**

The AVMSD and provisions on VSPs (Article 28b)	In line with the 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	2023 Draft Law amending the IMC Law 2012, Article 61 (6.1), (5.2)
Possibility to declare the presence of ACCs in user-generated video	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 61 (6.3)
Reporting or flagging systems to report harmful content to the VSP provider	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 61 (6.4 and 6.5)
Age verification systems for users	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 61 (6.6)
Content rating systems for users	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 58 (5.7)
Parental control systems	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 58 (5.8)
Procedures for complaints to the VSP	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 58 (5.9)
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	Article 58 (5.10)
Implementation and supervision		
Protection of the personal data of minors	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 58 (5.10)
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 58 (6)
Are there out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and can users assert their rights before a court in relation to VSPs?	Yes – aligned with the 2018 AVMSD in the Draft Law	Article 58 (7), (8)
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Not mentioned	

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

As can be seen above, the Draft Law Amending the IMC Law includes all the provisions of the 2018 AVMSD regarding VSPs. According to the Draft Law, the IMC shall ensure that all video-sharing platform providers under its jurisdiction apply measures that are practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided (Article 58 (4)).



4.5.5. Concluding remarks and summary of findings

In Kosovo the Law on the Independent Media Commission, 2012 is in the process of being updated. A draft law was prepared (in 2021) to amend and update the law, and according to Government plans it was expected to be presented to Parliament for approval in June 2023. This did not happen yet. A new version of the Draft Law was developed in 2023. The public consultation was completed and the Draft Law is currently (September 2023) undergoing review in the Prime Minister's office. Following this review, it will proceed for official approval within the Government. Afterward, it will be forwarded to the Assembly parliamentary committee (Committee on Public Administration, Local Governance, and the Media). The Draft Law is intended to update the media legislation and to align it with the European Union *acquis*. It is closely aligned with the 2018 AVMS Directive and it is worth noting that the Draft Law updating the IMC Law incorporates the provisions of the 2018 AVMS Directive relating to VSPs.

The legislation in force is not aligned with either the 2010 AVMS Directive or the 2018 AVMS Directive with regard to jurisdiction. The Draft Law updating the IMC Law aligns the provisions regarding jurisdiction with the AVMS Directive. The Draft Law introduces the principle of freedom of reception and retransmission, and a system of derogation from this principle.

The principles of non-discrimination, prohibition of incitement to hatred and violence, and prohibition of criminal content are covered in the legislative framework, under the Constitution and within the IMC Code of Ethics for media service providers. In addition, the Draft Law amending the IMC Law also addresses these issues in relation to VSPs and their obligation to protect the public from criminal content.

Regarding the other general principles and key values promoted by EU law and European standards, these are strong with regard to freedom of expression and the protection of minors. Various assessments carried out by international organisations and experts regarding Kosovo's right to freedom of expression and media freedom have been quite positive. Kosovo has a relatively free and independent media system. According to the European Commission 2023 report, concerns remain regarding public smear campaigns, threats and physical attacks on journalists. The lack of financial self-sustainability leaves the media, including the public broadcaster, vulnerable to political and business interests.

The new Draft Law will introduce stronger obligations regarding the accessibility of audiovisual content for people with disabilities. In addition, the principle of transparency of media ownership is not yet fully incorporated into the legal framework as current regulations and obligations in this area are lacking but some issues have been addressed in the Draft Law. The Draft Law also introduces obligations regarding European Works.

The list¹⁷⁶ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

¹⁷⁶ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



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

Table 90. Relevant documents, reports and opinions

Title	Main topics/themes	Link if available
Kosovo 2022 Report, European Commission, 12.10.2022, SWD (2022) 334 final	European Commission report on Kosovo	In English: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf
Kosovo 2021 Report, European Commission, 10.2021, SWD (2021) 292 final/2	European Commission report on Kosovo	In English: https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en
Kosovo, Freedom House, Freedom in the World 2022	Report on freedom of the media	In English: https://freedomhouse.org/country/kosovo/freedom-world/2022
“Defending Press Freedom in Times of Tension and Conflict”, Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2022	Freedom of the press and safety of journalists	In English: https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1
Kosovo 2021 Report, European Commission, 10.2021, SWD (2021) 292 final/2	European Commission report on the 2016 EU-Kosovo Stabilisation and Association Agreement (SAA)	In English: https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en
JUFREX (2021): Technical Paper – Review of Updated Draft Regulation on “Ownership and Concentration of Audiovisual Media Service Providers of Kosovo**” prepared by: Jean-François Furnémont and Deirdre Kevin	Media ownership transparency and media ownership	N/A
Traffic Lights Report, 2017, TACSO, Kosovo	Freedom of the press and safety of journalists	In English: https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-03/media_traffic_lights_report_kosovo.pdf

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



4.5.7. Data Compilation

This country report is based on information, materials and commentary supplied by the following national experts: Flutura Kusari, media lawyer based in Kosovo, and Ardita Zejnullahu, Executive Director at the Association of Broadcast Media in Kosovo (AMPEK).



4.6. Moldova (MD)¹⁷⁷ (Country report A¹⁷⁸)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- The legal framework in Moldova is relatively well aligned with the 2018 AVMS Directive (2018/1808), via the legislation in force, and via several amendments that are in the process of being completed via draft laws.
- There are some areas not fully aligned with the 2018 AVMS Directive, including the provisions on jurisdiction, and the principle of freedom of reception and retransmission, the provisions on video-sharing platforms (VSPs), the provisions on providing accessible content for people with disabilities, and the provisions related to the independence of the national regulatory authority (NRA).
- With regard to general principles, and the key values promoted by the Directive, there have been concerns regarding recent amendments to, and proposed draft amendments to, the legislative framework, which impact on freedom of expression and on the independence of the NRA. These are discussed in detail in the country report.
- Several initiatives are underway to address further reform, including a consultative group at the national parliament that will assist in the process of improving the legislative framework. Amendments adopted in November 2022 increased

¹⁷⁷ The country report on Moldova incorporates the feedback received from Liliana Vitu, Chairperson at the Audiovisual Council of the Republic of Moldova (CA), during the checking round with the national regulatory authorities.

¹⁷⁸ Country report A outlines the findings of Questionnaire A in relation to Group II, which includes Moldova.



obligations regarding transparency of media ownership. Further amendments to the Code of Audiovisual Media Services were adopted on 31 July 2023, which did not really address the key issues that remain outstanding in the alignment with the Directive. One important change concerns preventing the conflict of interest of members of the Audiovisual Council.

- The list¹⁷⁹ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.6.1. Introduction

Moldova, in the context of this research, is one of the European neighbourhood countries participating in the Creative Europe Programme 2014-2020 and is partially included in the Programme's MEDIA strand (Group II countries). Partial participation in the MEDIA and CROSS strands can be pursued only if there is compliance with general principles; full participation in clusters 2 and 3 is possible if tangible progress is made towards transposing the Audiovisual Media Services Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (hereinafter, the AVMS Directive or AVMSD) i.e. rules on linear services are aligned and there is progress regarding the alignment of rules on on-demand services; or full participation in all actions in the MEDIA and CROSS strands is possible if there is full alignment with the AVMS Directive.

On 3 March 2022, the Republic of Moldova presented its application for membership of the European Union. The application was tabled in the context of Russia's war of aggression against Ukraine.¹⁸⁰ On 17 June 2022, the European Commission provided its opinion to the Council on granting the country candidate status.¹⁸¹

4.6.1.1. 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 country report. It is important to note that this country report does not outline the national rules related to the entire AVMS Directive, but focuses rather on a selection of issues: definitions,

¹⁷⁹ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

¹⁸⁰ https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_3801.

¹⁸¹ The European Commission recommends to Council confirming Ukraine, Moldova and Georgia's perspective to become members of the EU and provides its opinion on granting them candidate status: https://ec.europa.eu/neighbourhood-enlargement/news/european-commission-recommends-council-confirming-ukraine-moldova-and-georgias-perspective-become-2022-06-17_en.



jurisdiction, freedom of reception and retransmission, and a range of general principles and key values including freedom of expression, independence of the national regulatory 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 (ACCs) and video-sharing platforms (VSPs).

There is an extensive range of decisions of the NRA and, when relevant these will be referred to in the country report or in the footnotes.

Table 91. Legal framework

Title	Status	Relevance	Link
<i>Constituția Republicii Moldova/</i> Constitution of the Republic of Moldova (1994)	In force	Fundamental rights	In Romanian: https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro In English: https://www.constcourt.md/public/files/file/ActeleCurtii/acte_en/MDA_Constitution_EN.pdf
<i>Codul Serviciilor Media Audiovizuale/ 174/2018</i> Code of Audiovisual Media Services (8 November 2018) (the AVMS Code)	In force	The main audiovisual media law covering the establishment and functioning of the NRA, and the rights and obligations of audiovisual media services	In Romanian: https://www.legis.md/cautare/getResults?doc_id=130823&lang=ro In English: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)046-e
LAW No. LP248/2023 of 31.07.2023 amending the Code of Audiovisual Media Services (8 November 2018)	Adopted	Introduced amendments relating to media ownership, provisions on disinformation, provisions on protection of minors, must-carry, judicial review.	In Romanian: https://www.legis.md/cautare/getResults?doc_id=138540&lang=ro
<i>Lege pentru modificarea Codului serviciilor media audiovizuale al Republicii Moldova Nr. 158/2021/</i> Law on amendment of the Code of Audiovisual Media Services, No. 158/2021 (2021) ¹⁸²	In force	Amendments to the procedures of appointment and dismissal of governing bodies of the public service broadcaster and of the NRA	In Romanian: https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5672/language/ro-RO/Default.aspx

¹⁸² These amendments were adopted in the form of an Organic Law (No. 158) on 4 November 2021.



Title	Status	Relevance	Link
<p><i>Lege Nr. 143 din 02.06.2022 pentru modificarea Codului Serviciilor Media Audiovizuale al Republicii Moldova Nr. 174/2018/Law No. LP143/2022</i></p> <p>Law No. 143 of 2 June 2022 on amendment of the Code of Audiovisual Media Services, No. 174/2018 (2022)</p>	In force with some exceptions ¹⁸³	Amending the AVMS Code: updating rules on European works; introducing provisions on “disinformation”; and additional provisions regarding foreign content (see main text below)	<p>In Romanian:</p> <p>https://www.legis.md/cautare/getResults?doc_id=131800&lang=ro</p>
<p><i>Lege Nr. 64 din 23-04-2010 cu privire la libertatea de exprimare/Law No. 64 on Freedom of Expression (2010)</i></p>	In force	Freedom of expression	<p>In Romanian:</p> <p>https://www.legis.md/cautare/getResults?doc_id=126675&lang=ro</p>
<p><i>Lege Nr. 982 din 11-05-2000 privind accesul la informație/ Law No. 982 on Access to Information (2000)</i></p>	In force	Access to information	<p>In Romanian:</p> <p>https://www.legis.md/cautare/getResults?doc_id=108552&lang=ro</p> <p>In English:</p> <p>https://www.rti-rating.org/wp-content/uploads/Moldova.pdf</p>
<p><i>Lege Nr. 121 din 25-05-2012 cu privire la asigurarea egalității/ Law No. 121 on Ensuring Equality (2012)</i></p>	In force	Equality, non-discrimination	<p>In Romanian:</p> <p>https://www.legis.md/cautare/getResults?doc_id=107179&lang=ro</p>
<p><i>Lege Nr. 1227 din 27.06.1997 cu privire la publicitate/ Law No. 1227 on Advertising (1997)</i></p>	In force, to be repealed on 8 January 2023	Advertising	<p>In Romanian:</p> <p>https://www.legis.md/cautare/getResults?doc_id=130907&lang=ro</p>
<p><i>Codul Penal al Republicii Moldova (2002)/</i></p> <p>Moldovan Criminal Code from 18 April 2002</p>		Criminal offences relevant to illegal content	<p>In Romanian:</p> <p>https://www.legis.md/cautare/getResults?doc_id=109495&lang=ro</p> <p>In English:</p> <p>https://cis-legislation.com/document.fwx?rgn=3835</p>

¹⁸³ This law enters into force on the date of publication in the Official Gazette of the Republic of Moldova, except for the provision of Article I, point 4, regarding the completion with paragraph (6) Article 6 of the AVMS Code No. 174/2018, which will enter into force after the expiration of the term of two years from the date of entry into force of this law.



Title	Status	Relevance	Link
Draft legislation			
<p><i>Lege cu privire la publicitate, 2022/Law on Advertising (2022)</i></p> <p>This will enter into force after the expiration of the term of nine months from the date of publication in the Official Gazette (8 April)</p>	Adopted in the final reading	Advertising	<p>In Romanian:</p> <p>https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislativ/tabid/61/LegislativId/5660/language/ro-RO/Default.aspx</p>
Relevant secondary legislation: by-laws, codes, decisions, etc. in force			
<p><i>Decizia Nr. 61/219 din 30 decembrie 2019 Cu privire la aprobarea Regulamentului privind conținuturile audiovizuale</i></p> <p>Decision No. 61/219, 30 December 2019 on the approval of Audiovisual Content Regulation</p> <p>(hereinafter, the Audiovisual Content Regulation (2019))</p>	In force	Regulation on audiovisual content with specific detail on, <i>inter alia</i> , the protection of minors, including the classification of programming and provisions relevant to VSPs	<p>In Romanian:</p> <p>http://www.audiovizual.md/files/D.61-219 din 30.12.2019 - Cu privire la aprobarea Regulamentului privind conținuturile audiovizuale_0.pdf</p>

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

The key legislative documents in relation to the implementation of the EU *acquis* are the current law – the Code of Audiovisual Media Services (8 November 2018) (hereinafter, the AVMS Code (2018)), and Decision No. 61/219, 30-12-2019 on the approval of the Audiovisual Content Regulation, (hereinafter, the Audiovisual Content Regulation (2019)).

Regarding general principles and key values, these are covered in the AVMS Code (2018), the Audiovisual Content Regulation (2019), the Constitution of the Republic of Moldova (1994), the Law on Ensuring Equality (2012) and the Law on Freedom of Expression (2010).

It is important to note that the AVMS Code was amended in November 2021¹⁸⁴ with regard to the appointment and dismissal of both the board of the public service broadcaster (PSB) and the Audiovisual Council (NRA). This will be discussed in further detail under the section on the independence of the NRA. A new law, the Law on amendment of the Code of Audiovisual Media Services was recently (2 June 2022) adopted by the parliament; this law aims, *inter alia*, to define and address issues such as “disinformation” (see the discussion below under the section on freedom of expression). It also updates provisions on European works, but these provisions will not come into force for two years. The law introduced provisions according to which media service providers shall not broadcast, and distributors

¹⁸⁴ Law on amendment of the Code of Audiovisual Media Services of the Republic of Moldova, No. 174/2018 (Official Gazette of the Republic of Moldova, 2018, No. 462–466, Article 766). These amendments were adopted in the form of an Organic Law (No. 158) on 4 November 2021.



shall not retransmit, programmes with informational, news, military and political content which have been produced in countries other than the member states of the European Union, the United States of America, Canada and countries which have ratified the European Convention on Transfrontier Television (ECTT). The only exceptions are films and entertainment programmes which do not have military content.

According to the national expert, there are several laws that need amendment – namely, the Law on Freedom of Expression, the Law on Personal Data Protection and the Law on Access to Information. In December 2020,¹⁸⁵ the parliament introduced a legislative package addressing some of the most pressing media reform needs that were submitted by a joint civil society initiative including Freedom House, the Association for Independent Press, and the Independent Journalism Center.¹⁸⁶ However, the legislative package was not passed before the parliament’s dissolution in April 2021, so in order to be adopted, the draft laws must be presented in the new parliament. The permanent parliamentary committee that oversees media reform instituted a consultative group of media experts from civil society organisations that will assist in the process of improving the legislative framework.¹⁸⁷ The current focus of the group of experts and the committee is on the finalisation and promotion of a national programme for the development of the media sector.

Amendments were adopted in November 2022 introducing provisions regarding the annual reporting to the regulator by providers and distributors of media services, related to the final beneficiaries and shareholders, sources of funding and ensuring the transparency of this information to the public.

A further set of amendments were adopted in July 2023, addressing (among others) media ownership, provisions on disinformation, provisions on protection of minors, must-carry, conflict of interest of Council members, and judicial review. These are now included, where relevant, in the text below.

Also in July 2023, the Parliament approved the National Media Development Program for 2023-2026.¹⁸⁸ The objectives of the plan intend to tackle a range of issues: “such as frequent legislative amendments introduced without any expertise or debates, as well as serious deficiencies at the level of their implementation, lack of media pluralism, unstable financial situation of most media outlets, professionals without a training required to face the challenges in the sphere, and ethical standards ignored by journalists.”

¹⁸⁵ The Draft Law on amending some legislative acts (Law No. 982/2000 on Access to Information - Articles 2, 4, 5, etc.; Law No. 64/2010 on Freedom of Expression – Article 2; etc): <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5354/language/ro-RO/Default.aspx>.

¹⁸⁶ Parliamentary Committee on Culture, Education, Research, Youth, Sports and the Media//EX-POST IMPACT EVALUATION REPORT on Law No. 982/2000 on access to information, 14 July 2020: <https://www.parlament.md/LinkClick.aspx?fileticket=bTk8rg812jl=&tabid=104&language=ro-RO>.

¹⁸⁷ Questionnaire. Information requested by the European Commission to the Government of the Republic of Moldova for the preparation of the Opinion on the application of the Republic of Moldova for membership of the European Union, Part I, April 2022, p. 383: https://gov.md/sites/default/files/document/attachments/chestionar_p.1-final-ue.pdf.

¹⁸⁸ <https://media-azi.md/en/parlamentul-a-aprobat-programul-national-de-dezvoltare-a-mass-mediei-pentru-anii-2023-2026/>



4.6.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of the relevant current definitions with the AVMS Directive.

Table 92. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	Partially in line with the 2018 AVMSD. Lacks the clarification that an audiovisual media service is either a television broadcast or an on-demand audiovisual media service.	AVMS Code (2018), Article 1 – Definitions
Video-sharing platform (VSP) service	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Programme	Yes – aligned with the 2018 AVMSD.	As above, Article 1
User-generated video	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Editorial decision	There is no such definition. However, the Code makes reference to editorial decisions in relation to jurisdiction.	
Editorial responsibility	Closely aligned with the definition in the 2018 AVMSD. Lacks the phrase: “Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided”.	As above, Article 1
Media service provider	Yes – aligned with the 2018 AVMSD.	As above, Article 1
VSP provider	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Broadcaster	No definition – media service provider – used in the Code.	
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Audiovisual commercial communication (ACC)	The definition precisely aligns with the 2010 AVMSD, but not with the 2018 AVMSD, as it lacks the inclusion of ACC in “user-generated video”.	As above, Article 1
Television advertising	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Surreptitious ACC	Yes – aligned with the 2018 AVMSD.	As above, Article 1
Sponsorship	This precisely aligns with the 2010 AVMSD, but not with the 2018 AVMSD, as it lacks reference to VSP services and user-generated videos.	As above, Article 1
Teleshopping	Yes – aligned with the 2018 AVMSD.	As above, Article 1



Definitions (Article 1 AVMSD)	In line with AVMSD	References
Product placement	The definition precisely aligns with the 2010 AVMSD, but not with the 2018 AVMSD, as it lacks the reference to user-generated videos.	As above, Article 1
European works	Yes – aligned with the 2018 AVMSD.	As above, Article 6 (1, 2, 3)
Independent producer	Aligns with the standard definitions of an “independent producer”: its share in the capital of a media service provider shall not exceed 15%; and the media service provider does not hold a share in the capital of the producer of more than 15%, hence including ownership as a defining criterion.	As above, Article 1
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	Yes – aligned with the 2018 AVMSD. Article 11 prohibits certain content such as that which would propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or sex, race, nationality, religion, disability or sexual orientation discrimination (11 (2a)). AVMS providers are required to comply with the legislation on the defence of honour, dignity and professional reputation, as well as with the right to respect for and protection of intimate, family and private life (11 (3)).	As above, Article 11 (2a) and 11 (3)
Definition of incitement to hatred (or equivalent)	The Constitution contains a definition of hate speech: a message that disseminates, incites, promotes or justifies racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination on grounds of sex, race, nationality, religion or belief, disability or sexual orientation. *** Article 11 prohibits certain content such as that which would propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or sex, race, nationality, religion, disability or sexual orientation discrimination.	The Constitution of the Republic of Moldova (1994), Article 32 paragraph 3 *** AVMS Code (2018), Article 11

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

The table above shows that the majority of definitions in the national legislation align fully with the 2018 AVMS Directive. Several of the definitions around ACCs need to be updated in order to include reference to “user-generated content” and/or “video-sharing platforms”. Specific definitions and provisions that deal with incitement to hatred are addressed in the Constitution and in the AVMS Code.



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

The table below outlines the legislative framework in relation to the establishment of jurisdiction.

Table 93. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers	Closely aligned with both the 2010 and 2018 AVMSD. However, it considers jurisdiction to include “use of an Internet connection located on the territory of the Republic of Moldova”, Article 2 (6e), which is somewhat vague.	AVMS Code (2018), Article 2 (5-10)
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	Not mentioned in the current law.	
Article 2 (5b). Requirement to maintain up-to-date list of the AVMS providers under national jurisdiction	Yes – aligned with the 2018 AVMSD.	AVMS Code (2018), Article 75 (4j)
Article 28a (paragraphs 1-5) regarding the establishment of jurisdiction of VSPs	Not outlined in the current law.	
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 – aligned with the 2018 AVMSD. The Audiovisual Council establishes and maintains a list of VSP providers that are, or are considered to be, under the jurisdiction of the Republic of Moldova.	AVMS Code (2018) Article 75 (4j) *** Audiovisual Content Regulation (2019), Chapter XI, paragraph 236
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing an opinion on jurisdiction	Not mentioned in the current law.	

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



The legal framework regarding jurisdiction is closely aligned with the 2018 AVMS Directive regarding linear services. With regard to the secondary criteria for the establishment of jurisdiction, the law includes the use of “an Internet connection located on the territory of the Republic of Moldova”, which is somewhat unclear. Although the legislative framework (under the AVMS Code, and under the Regulation of Audiovisual Content) includes VSPs in its scope, there are no provisions for establishing the jurisdiction of VSPs. The Audiovisual Council is tasked with establishing lists of audiovisual media services and VSPs that are, or are considered to be, under the jurisdiction of Moldova.

Regarding the principle of freedom of reception and retransmission for audiovisual media services, this is not incorporated in the legal framework in Moldova. Article 7 of the AVMS Code refers to the right of individuals to receive information (Article 7 (2)). Given that the principle of freedom of reception and retransmission is not incorporated into the framework, it is also the case that no system of derogations from this freedom exists. The AVMS Code (Article 11, paragraph 2) prohibits certain types of content (in relation to national audiovisual media services): that are likely to propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or sex, race, nationality, religion, disability or sexual orientation discrimination; and the dissemination of child pornography. In order to fully align with the 2018 AVMS Directive, the national framework needs updating with regard to some aspects of jurisdiction and also with reference to the principle of freedom of reception and retransmission, and to a procedure for derogations.

4.6.2. 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 94. General principles and key values

General principle/key value	Relevant provision/provisions	References
Principle of non-discrimination	The Constitution prohibits, <i>inter alia</i> , national, racial or religious hatred and incitement to discrimination. ***	Constitution of the Republic of Moldova, Article 32 (2)
	The Law on Ensuring Equality defines discrimination: any distinction, exclusion, restriction or preference in rights and freedoms of a person or group of persons. ***	*** Law on Ensuring Equality (2012), Article 2
	The AVMS Code prohibits audiovisual programmes that may propagate, incite, promote or justify racial hatred, xenophobia, anti-	***



General principle/key value	Relevant provision/provisions	References
	Semitism or other forms of hatred based on intolerance or discrimination on grounds of sex, race, nationality, religion, disability or sexual orientation (Article 11) and prohibits incitement to discrimination by Article 63, paragraph (4).	AVMS Code (8 November 2018) Article 11, Article 63 (4)
Prohibition of incitement to hatred and incitement to violence	<p>As noted above, the Constitution and the Law on Freedom of Expression prohibit hate speech.</p> <p>The AVMS Code (as noted above) prohibits audiovisual programmes that may propagate, incite, promote or justify racial hatred (Article 11). The Audiovisual Council is obliged to monitor whether audiovisual media service providers promote or generate content that incites violence, hatred or discrimination on their web pages. The Audiovisual Council can sanction the use of hate speech with fines, and/or withdrawal of the broadcasting licence (Article 84 (9)).</p> <p>***</p> <p>The Audiovisual Content Regulation (2019) repeats this prohibition.</p>	<p>AVMS Code (2018), Article 11, Article 84 (9)</p> <p>***</p> <p>Audiovisual Content Regulation (2019) Chapter XI, paragraph 236</p>
Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism	<p>The Criminal Code prohibits incitement to terrorism (Article 279–2), and prohibits Child pornography (Article 208–1).</p> <p>***</p> <p>Article 11 also prohibits the dissemination of child pornography.</p> <p>***</p> <p>The Law on Countering Extremist Activity of the Republic of Moldova prohibits the dissemination of extremist materials through the mass media. Article 7 of the law deals with the liability of mass-media institutions for disseminating “extremist materials” and carrying out “extremist activity”, potentially leading to their ban or one-year suspension (Article 7 (4)).</p> <p>***</p> <p>The Audiovisual Content Regulation includes the obligation for VSPs to protect the general public from, <i>inter alia</i>, 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 (paragraph 237 c)).</p>	<p>Moldovan Criminal Code No. 985 of 18 April 2002, Article 279–2 and Article 2018–1</p> <p>***</p> <p>AVMS Code (2018), Article 11</p> <p>***</p> <p>Law No. 54 of 21 February 2003 on Countering Extremist Activity of the Republic of Moldova, Article 7</p> <p>***</p> <p>Audiovisual Content Regulation (2019), Chapter XI, paragraph 237c</p>



General principle/key value	Relevant provision/provisions	References

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

Each of these first three principles: non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content are covered in the legislative framework. The Law on Ensuring Equality (2012) is a dedicated law dealing with equality and non-discrimination. The AVMS Code (2018) is particularly key in the prohibition of this kind of content in audiovisual media services, while the Audiovisual Content Regulation (2019) includes the relevant obligations for VSPs.

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

The table below indicates the relevant legal framework for the protection of freedom of expression. It includes provisions from the Constitution, the AVMS Code (2018), the Law on Freedom of Expression, and the Moldovan Criminal Code.

Table 95. Freedom of expression

General principle/key value	Relevant provision/provisions	Reference
Freedom of expression/access to information/prohibition of censorship	The Constitution, under Article 32, protects freedom of expression, access to information and prohibition of censorship.	Constitution of the Republic of Moldova (1994), Article 32
Freedom of expression/freedom of the media	Article 7 guarantees among other things the freedom of expression of AVMS providers and media service distributors, the right of individuals to freedom of expression and the right to receive information, and that control over the content of audiovisual media services before broadcasting shall be forbidden. Article 8 guarantees editorial independence and freedom of creation.	AVMS Code (2018), Article 7
Freedom of expression/freedom of the media/editorial independence	Article 4 of the Law on Freedom of Expression stipulates, <i>inter alia</i> , that the state guarantees the freedom of expression of the media; no one may prohibit or prevent the media from disseminating information of public interest except in accordance with the law. Prohibition of censorship in the media is stipulated in Article 5 of the law. It is forbidden to interfere in the editorial activity of the mass media, except for the cases provided by law. If the interference is provided by law, it is to be interpreted exhaustively.	Law No. 64/2010 on Freedom of Expression (2010), Articles 4 and 5



Media self-regulation/freedom of the media/preventing censorship	The Moldovan Criminal Code prohibits the intentional obstruction of the media or a journalist's activity as well as intimidation due to criticism.	Moldovan Criminal Code No. 985 of 18 April 2002, Article 180/1
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Source: Response of national expert of Moldova to European Audiovisual Observatory standardised survey

Although much of the national legal framework is in line with international standards, some of the changes made in 2021 to the AVMS Code raised concerns regarding the independence of both the PSB and the NRA. These are discussed in detail under the section (below) dealing with the independence of the NRA.

As noted above, there are several laws relevant to freedom of expression that need to be updated – namely, the Law on Freedom of Expression, the Law on Personal Data Protection and the Law on Access to Information, and to this end, the parliament has established a consultative group of media experts from civil society organisations that will assist in the process of improving the legislative framework.¹⁸⁹ Other areas of concern include the need to regulate political advertising and strengthen rules for covering election campaigns in the media.¹⁹⁰

The European Commission report on the Association Implementation (2021) noted that: Moldova's ranking on the 2021 World Press Freedom Index had improved by two places (89th out of 180 countries) but remained low due to the concentration of media ownership, the monopolisation of the advertising market, the lack of editorial independence and control of media institutions by economic and political groups, the barriers to access to information, as well as attacks on and intimidation of journalists.¹⁹¹

In recent years, Moldova has dealt with several crises. The information space has been the subject of major security risks and manipulation in the context of the Russian Federation war in Ukraine. The vaccination campaign against COVID-19, the energy crisis and the military aggression all gave rise to increased fake information and misinformation. A Draft Law was introduced in 2022, with the aim of counteracting disinformation.¹⁹² Debates over the Draft Law – referred to by the opposition as the "censorship law" – took place in parliament on 13 April 2022 and included representatives of non-governmental media organisations and those of the Internet and media service sectors. They emphasised, *inter alia*, that there should be further consultation with stakeholders on the introduction

¹⁸⁹ Questionnaire. Information requested by the European Commission from the Government of the Republic of Moldova for the preparation of the Opinion on the application of the Republic of Moldova for membership of the European Union, Part I, April 2022, p. 383:

https://gov.md/sites/default/files/document/attachments/chestionar_p.1-final-ue.pdf.

¹⁹⁰ Independent Journalism Centre (2021): Moldovan press status index for 2021: https://cji.md/wp-content/uploads/2022/02/ISPM_2021-1.pdf.

¹⁹¹ European Commission (2021), "Joint Staff Working Document – Association Implementation Report on the Republic of Moldova":

https://www.eeas.europa.eu/sites/default/files/swd_2021_295_f1_joint_staff_working_paper_en_v2_p1_153564_9.pdf.

¹⁹² Law for the modification of some normative acts (2022):

https://www.legis.md/cautare/getResults?doc_id=129026&lang=ro.



of new concepts in the Law on Freedom of Expression, given that defining the terms “false information” or “misinformation” is a very complicated task. They also stressed that the amendments should contain a clear mechanism on the basis of which criteria such decisions are taken in the Secret Service (SIS), which has a role in the implementation of the law. Ideally these decisions should involve other legitimate entities. Final decisions, as is the usual case in the field of freedom of expression, should be taken by the competent court.

In June 2022, the parliament adopted those amendments related to audiovisual media in the AVMS Code which are aimed at countering disinformation.¹⁹³ The amendments involve introducing into the law the notion of disinformation, which means “*the intentional dissemination of false information created to harm a person, a social group, an organisation or the security of the state*”. At the same time, the Code has been supplemented with provisions according to which media service providers shall not broadcast, and distributors shall not retransmit, programmes with informational, news, militaristic and political content which have been produced in countries other than the member states of the European Union, the United States of America, Canada and countries which have ratified the ECTT. The only exceptions are films and entertainment programmes which do not have any militaristic content. The law also bans audiovisual programmes which, regardless of their origin, justify wars of aggression, deny war crimes and crimes against humanity or incite hatred. In addition, the law addresses European works whereby at least 50% of broadcasts must originate from or be produced in EU countries or countries that have ratified the ECTT, however these provisions will enter into force two years after the law.

The document also places restrictions on the broadcasting of commercial communications and provides for a range of penalties, including fines of up to MDL 100 000 (EUR 5 000) for TV and radio stations that spread disinformation.

The amendments to the Code of July 2023 adjusted the definition of disinformation, introducing the need to verify information as false: “the intentional dissemination, by any means, in the public space, of information whose false or false character can be verified and which is of a nature to damage national security”. It is now related only to national security.

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

The Audiovisual Council was established in 1996 and is an autonomous public authority regulating the public and private audiovisual media in Moldova and supervising the correct implementation of the AVMS Code. The NRA is referred to variously in laws and codes as the “Audiovisual Council” and/or the “Broadcasting Council”. For the sake of clarity, the term “Audiovisual Council” is used throughout this country report.

¹⁹³ *Lege Nr. 143 din 02.06.2022 pentru modificarea Codului Serviciilor Media Audiovizuale al Republicii Moldova Nr. 174/2018*: https://www.legis.md/cautare/getResults?doc_id=131800&lang=ro.



Table 96. Independence of the national regulatory authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Audiovisual Council is an autonomous public authority, which is organisationally independent from any other entity and is responsible for implementing the provisions of the AVMS Code. The Audiovisual Council has the status of a legal person governed by public law.</p>	<p>AVMS Code (2018), Article 74 (1 and 2)</p>
NRAs should exercise their powers impartially and transparently	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Audiovisual Council shall ensure the transparency of its own activities.</p> <p>***</p> <p>The Audiovisual Council publishes all its decisions on its official website, and the decisions to issue broadcast licenses and those of a normative nature are also published in the Official Monitor of the Republic of Moldova (Article 80(8)).</p>	<p>As above, Article 75 (5) c)</p> <p>***</p> <p>LAW No. LP248/2023 of 31.07.2023 amending the Code of Audiovisual Media Services.</p> <p>Article 10 amending Article 80 (8)</p>
Clear definition of the competencies and powers of the NRAs outlined in the law	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Article 75 outlines clearly the competencies and powers of the Audiovisual Council.</p>	<p>As above, Article 75</p>
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets	<p>Yes – partly aligned with the 2018 AVMSD.</p> <p>Under Article 80, the Audiovisual Council shall act on the basis of its own organisation and functioning regulation. Financing of the Audiovisual Council is established in Article 81 of the Code. The budget shall consist of subsidies from the state budget and from its own revenues. The Council’s revenues also come from donations, sponsorships and other legal sources, which might give rise to uncertainty regarding budgets. The Audiovisual Council shall approve the annual report on its financial activity, which shall be published in the Official Gazette of the Republic of Moldova and on the official website of the Council.</p>	<p>As above, Articles 80 and 81</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>Partly aligned with the 2018 AVMSD.</p> <p>It is not clear how the Director General is appointed, nor are there clear reasons for dismissal. There are also no clear procedures for dismissal of the Council (see also discussion below in the main text).</p> <p>Article 76 of the Code describes the composition of the Audiovisual Council, and the requirements regarding the professional experience and competence and compatibility of its members. When establishing the Audiovisual Council, the principle of gender equality shall be observed.</p>	<p>As above,</p> <p>Articles 76, 77, 78 and 79</p> <p>***</p> <p>LAW No. LP248/2023 of 31.07.2023 amending the Code of Audiovisual Media Services. Article 9</p>



AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
	<p>Article 76 outlines the procedures of appointment: the final list of candidates is selected by a parliamentary commission. This follows the proposal of candidates by the parliament, the president, the government, and civil society. All candidates go through public hearings organised by the parliamentary committee (Article 76, (5)). Council members shall be appointed for a single six-year term. Article 78 of the Code regulates issues of incompatibility and conflict of interest.</p> <p>Article 79 of the Code describes the management of the Audiovisual Council, which is headed by a Chairperson and a Deputy Chairperson elected by secret ballot by at least five Council members.¹⁹⁴</p> <p>***</p> <p>The amendments to the Code of July 2023 introduced a provision on conflict of interest regarding members of the Council: <i>the function of a member of the Audiovisual Council is incompatible with any other public or private activity or function, with the exception of teaching, scientific, creative, research or training activities, if they do not present conflicts of interest.</i></p>	<p>amending Article 78 (1)</p>
Existence of effective and independent appeal mechanisms	<p>All decisions of the Audiovisual Council may be appealed to the court. The procedure is established in the Moldovan Administrative Code.</p> <p>***</p> <p>The decisions of the Audiovisual Council can be challenged in the court of law in accordance with the provisions of the Administrative Code, without observing the prior procedure (Article 84 (15)).</p>	<p>As above, Articles 27 (8) and 84 (15, 16)</p> <p>***</p> <p>LAW No. LP248/2023 of 31.07.2023 amending the Code of Audiovisual Media Services. Article 11 amending Article 84 (15)</p>
Provisions in the law that support cooperation between NRAs	Not mentioned in the law.	

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

The current legislative framework is closely aligned with the requirements of the 2018 AVMS Directive. Regarding the requirement that NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own

¹⁹⁴ The nature of this voting is regulated under a decision of the Council: Decision No. 54/182, 31 October 2019 on the approval of the Regulation on the procedure for appointing and dismissing the president and vice-president of the Audiovisual Council.



budgets, it is unusual to note that part of the Audiovisual Council's revenues come from donations and sponsorships, which might give rise to uncertainty regarding budgets.

Amendments were introduced to the AVMS Code in November 2021.¹⁹⁵ The amendments introduced new provisions regarding the requirements and qualifications to become a member of the Audiovisual Council, as well as their appointment and possible dismissal (at the individual and the whole-body level). The rejection by the parliament of the annual activity report of the Audiovisual Council also allows for the dismissal of the members of the Audiovisual Council as a body. On 11 November 2021, the parliament rejected the Audiovisual Council's yearly activity report and dismissed all of its members (in accordance with the amendments to the AVMS Code, outlined above).

On 14 January 2022 the Representative on Freedom of the Media (RFoM) of the Organisation for Security and Cooperation in Europe (OSCE) presented a legal analysis of the amendments to the AVMS Code.¹⁹⁶ The analysis found that the amendments led to increased parliamentary control over the public service broadcaster TeleRadio-Moldova (TRM) and the Audiovisual Council. The analysis also emphasised the importance of having precise rules as regards the possibility to dismiss members of regulatory authorities, according to Council of Europe standards, so as to avoid a situation in which dismissal is used as a means of political pressure. In addition, regulatory authorities should be supervised only in respect of the lawfulness of their activities, and the provisions allowing a procedure to dismiss the entire Council on the basis of rejecting the annual activity report should be repealed.¹⁹⁷ The RFoM underlined the importance of the independence of these public institutions, and called on the authorities to revisit the legal framework related to freedom of broadcasting in order to ensure its full compliance with international human rights standards and the OSCE commitments.¹⁹⁸

There is also a need to stipulate the conditions related to the rejection of the annual reports of the Audiovisual Council, which are not presently outlined in the amendments. In this regard, an official request was recently forwarded to the Office of the Council of Europe in Chisinau, asking for assistance in further improving the AVMS Code so that it offers better provisions for safeguarding the independence of the Audiovisual Council, operational independence, accountability and efficiency.¹⁹⁹

The Committee of Ministers (CoM) of the Council of Europe decided on 10 June 2022 to continue monitoring the authorities of the Republic of Moldova to ensure the proper implementation of the European Court of Human Rights (ECtHR) judgment in the case of *Manole and others v. Moldova*.²⁰⁰ The CoM decided to continue examining the case in an advanced procedure and encouraged the authorities to review, *inter alia*, the provisions of

¹⁹⁵ Law on amendment of the Code of Audiovisual Media Services of the Republic of Moldova, No. 174/2018 (Official Gazette of the Republic of Moldova, 2018, No. 462–466, Article 766). These amendments were adopted in the form of an Organic Law (No. 158) on 4 November 2021.

¹⁹⁶ OSCE (2021): Legal Analysis on the Law on Amendment of the Code of Audiovisual Media Services of the Republic of Moldova. Commissioned by the OSCE Representative on Freedom of the Media from Dr Joan Barata Mir: <https://www.osce.org/files/f/documents/3/2/509792.pdf>.

¹⁹⁷ Council of Europe Recommendation Rec(2000)23.

¹⁹⁸ <https://www.osce.org/representative-on-freedom-of-media/509924>.

¹⁹⁹ <https://www.coe.int/en/web/chisinau/media-pluralism-and-freedom-of-expression>.

²⁰⁰ <https://hudoc.echr.coe.int/fre%23%7b%22itemid%22:%5b%22001-94075%22%5d%7d>.



the AVMS Code to ensure that they provide clear guarantees for the genuine independence of the Audiovisual Council.²⁰¹

The amendments to the Code of July 2023 introduced some changes including a provision on conflict of interest regarding members of the Council, further obligations on the transparency of the activities of the Council, and also regarding judicial review.

The NRA also faces challenges with regard to resources and technology. In a recent interview,²⁰² the new Council President, Liliana Vitu, mentioned that lack of sufficient resources, staff and technology remain among the biggest challenges for the broadcasting regulator's administration. Another concern was the need to enhance expertise, in particular given the new challenges of dealing with issues such as hate speech and disinformation.

4.6.2.3. 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 ACCs; and in relation to prohibited/restricted advertising.

Table 97. Protection of minors

AVMSD and the Protection of minors	In line with AVMSD	References
Obligations to protect minors from harmful content, via watershed/scheduling, age verification tools or other technical measures	Yes – aligned with the 2018 AVMSD regarding harmful content. Watershed/scheduling, age verification tools or other technical measures are included in the rules – conditional access systems (Article 15.7). On-demand audiovisual media services must ensure that minors cannot normally see or hear those programmes, using access restriction measures (Article 15.8). *** Precise rules along with content categorisation are detailed in the Audiovisual Content Regulation (2019).	AVMS Code (2018) Article 15.7 and Article 15.8 *** Audiovisual Content Regulation (2019), Chapter V *** LAW No. LP248/2023 of 31.07.2023 amending the Code of Audiovisual Media

²⁰¹ Independent Journalism Center (14 June 2022): Thanks to the Efforts of the ICJ, the Committee of Ministers of the Council of Europe Will Continue to Monitor the Implementation of the Manole and Others v. Moldova Judgment:

<https://cji.md/en/thanks-to-the-efforts-of-the-icj-the-committee-of-ministers-of-the-council-of-europe-will-continue-to-monitor-the-implementation-of-the-manole-and-others-v-moldova-judgment/>.

²⁰² MediaAZI (March 2022): The New BC President Liliana Vitu: Ukraine War Shows We Are Still Vulnerable to Foreign Propaganda: <https://media-azi.md/en/noua-presedinta-ca-liliana-vitu-razboiul-din-ucraina-a-demonstrat-ca-suntem-inca-vulnerabili-la-propaganda-din-exterior/>.



AVMSD and the Protection of minors	In line with AVMSD	References
	*** The amendments of July 2023 added reference to the classification of audiovisual programmes according to appropriate time-slots.	Services. Article 3 amending 15(7)
Prohibition of commercial use of personal data of minors collected when implementing these measures	Not mentioned.	
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	Yes – aligned with the 2018 AVMSD.	AVMS Code (2018), Article 15 (9) *** Audiovisual Content Regulation (2019), Chapter V
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	Yes – aligned with the 2018 AVMSD. ACCs are prohibited for cigarettes and other tobacco products, including electronic cigarettes. It is forbidden to broadcast ACCs which are intended for the marketing of alcoholic beverages and which specifically target minors.	AVMS Code (2018), Article 64 (3)a and 64 (2) ²⁰³
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – aligned with the 2018 AVMSD.	As above, Article 64 (2)
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Not mentioned.	
Prohibiting of product placement in children's programmes	Yes – aligned with the 2018 AVMSD.	AVMS Code (2018), Article 69 (1)

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

As can be seen from the above, the national legislation is almost completely aligned with the 2018 AVMS Directive. The need to effectively reduce exposure to ACCs for high fat, sugar and salt (HFSS) foods has not been addressed. The prohibition of commercial use of personal data of minors collected when implementing the measures for their protection has not been mentioned. Article 15 of the AVMS Code (2018) is dedicated to the protection

²⁰³ Also regulated in detail via Decision No. 133, 23 December 2009 on the broadcasting of alcohol advertisements on radio and TV programmes:

https://www.legis.md/cautare/getResults?doc_id=39220&lang=ro.



of minors. In addition, the Audiovisual Content Regulation (2019) includes more details on categorisation of content and specific measures to be taken (symbols, warnings, watershed, scheduling, conditional access, etc.). The amendments of July 2023 included direct reference to the categorisation of content in the AVMS Code. Regarding media literacy initiatives the Independent Journalism Center’s Media Education course includes modules that help minors to protect themselves online.²⁰⁴

4.6.2.4. 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 outlines the framework in Moldova.

Table 98. 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	Not aligned with the 2018 AVMSD. Yes – aligned with the 2010 AVMSD. Article 16 contains an encouragement to provide accessible content. There are some obligations (see discussion in the main text below).	AVMS Code (2018), Article 16
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 NRAs	Not mentioned.	
States should provide a public online point of contact for providing information and receiving complaints	Not mentioned.	
Emergency information should be in accessible formats	Not mentioned.	

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

Article 16 of the AVMS Code (2018) outlines the right of persons with disabilities to access audiovisual media services. National and regional audiovisual media services should provide at least one newscast per day in sign language or with subtitles. They should interpret in sign language or with subtitles programmes of major importance either entirely

²⁰⁴ The course is available here: https://educatia.mediacritica.md/wp-content/uploads/2020/07/Manual-Liceu.pdf?fbclid=IwAR29FAO1Lxm1x_GILPgZEt3fqPYF5eDYZ4IXEvs-o20CDjh9jhnb2CCzenM.



or via summaries, and interpret in sign language at least 60 minutes of the monthly broadcasting time of the programme service. They should also inform the public about the time of broadcasting audiovisual programmes that are accessible. A decision of the Audiovisual Council from December 2019,²⁰⁵ provided more detail on the requirements for different types of broadcasters.

The legal framework does not yet align with the stronger obligations of the 2018 AVMS Directive. While some obligations exist, the current legal framework does not oblige AVMS providers to develop action plans in this area and/or to communicate these to the NRAs. In addition, the regime does not reflect best practices in Europe whereby obligations on audiovisual media services are usually implemented over five-year periods, and gradually increased – leading to the “continuous and progressive” provision of accessible content.²⁰⁶

However, on 24 June 2022 the Audiovisual Council launched public consultations on the draft amendments to the Audiovisual Content Regulation, in particular regulations in order to ensure the right of access to audiovisual media services for people with disabilities. These include, *inter alia*, specifications on the quality of sign language and its presentation, and refer to providing sign language for official communications of public authorities regarding a state of emergency, siege or war; official events of public authorities; and events in the context of election campaigns.²⁰⁷

4.6.2.5. 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 AVMS Directive requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The table below looks at the national legislative framework regarding these provisions.

Table 99. Transparency of media ownership

AVMSD and transparency of media ownership	In line with AVMSD	Reference/link
Requirement for AVMS provider to provide publicly accessible information on the following: its	Yes – aligned with the 2018 AVMSD.	AVMS Code (2018), Article 21

²⁰⁵ Decision No. 61/216 of 30 December 2019 regarding the access of people with disabilities to the services of audiovisual programmes: http://www.audiovizual.md/files/D_61-216_din_30.12.2019_-_Cu_privire_la_aprobarea_conceptuala_a_Proiectului_Regulamentului_privind_asigurarea_dreptului_de_acces_la_serviciile_media_audiovizuale_a_persoanelor_cu_dizabilitati_de_vaz_si_auz.pdf.

²⁰⁶ See for example: “Update on Accessibility of TV and on-demand audiovisual media services. An Overview of Regulatory trends.” Background document, 50th EPRA meeting Athens, 23-25 October 2019. Working Group III. Prepared by Deirdre Kevin: 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.

²⁰⁷ <http://www.audiovizual.md/news/consiliul-audiovizualului-ini-iaz-consult-ri-publice-0>.



AVMSD and transparency of media ownership	In line with AVMSD	Reference/link
name; the address at which it is established; its email address or website; the state having jurisdiction over it and the competent NRA	AVMS providers must ensure the simple, direct and permanent access of users to, <i>inter alia</i> : its name, legal status and head office; the name of its legal representatives; contact details of the AVMS provider, including the legal address, mailing addresses, the email address and the official web page where it can be contacted quickly, directly and effectively.	
Possibility to also require AVMS providers to make accessible information on their ownership structures.	<p>Yes, as above. AVMS providers must ensure the simple, direct and permanent access of users to, <i>inter alia</i>, information on: beneficial owners and the list of shareholders.</p> <p>***</p> <p>The Audiovisual Council approved a model form for the self-declaration on transparency of ownership. The Audiovisual Council makes these declarations public on its website.²⁰⁸</p> <p>***</p> <p>The provisions of the AVMS Code were strengthened with amendments in November 2022.</p>	<p>AVMS Code (2018), Article 21</p> <p>***</p> <p>Decision No. 17/58 of April 9, 2019 – Regarding the approval of the model forms related to the procedure for issuing, extending and modifying the broadcasting licence</p> <p>***</p> <p>AVMS Code (2018), as amended 2022</p>
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Audiovisual Council shall, at least once a year, develop and publish on its official website the list of national, regional and local AVMS providers.²⁰⁹</p>	<p>AVMS Code (2018), Article 4 (13)</p>

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

From the table above, it is apparent that the rules regarding transparency of media ownership align with those of the 2018 AVMS Directive. In addition, there are also strong provisions requiring details of ownership from audiovisual media services, that are made public on the website of the Audiovisual Council.

The AVMS Code establishes a definition of audiovisual pluralism incorporating market diversity, content diversity and diversity of opinions. There are also provisions on media concentration (Article 29). It was (until July 2023) considered that a person or legal representative has a dominant position in the formation of the public opinion if the audience share of the audiovisual media service exceeds 35% of the market. The amendments of July 2023 introduced a stronger provision here adjusting the audience share

²⁰⁸ Decision No. 35/175, 29 September 2015 on the approval of the Declaration on the Transparency of Ownership: https://www.legis.md/cautare/getResults?doc_id=88407&lang=ro.

²⁰⁹ The Audiovisual Council approves these lists; see, for example, Decision No. 100, 30 March 2022, regarding approval of the list of national, regional and local AVMS providers.



to 25% as an indication of a dominant position in the formation of the public opinion. The Audiovisual Council is tasked with assessing potential dominant situations, and should engage in conciliation with the holder of the broadcasting licence in order to agree on the measures aimed to remedy the respective situation and ensure the pluralism of opinions.

Several reports have discussed the issue of high levels of ownership concentration in the market, due to the existence of limited provisions on media ownership and the fact that even these limitations are not respected. It is frequently the case that the media outlets are monopolised by certain political groups which use them for fighting political opponents, manipulation and disinformation.²¹⁰ As noted above, the measure of dominance has been adjusted.

The 2022 Action Plan of the Audiovisual Council²¹¹ establishes under Objective No. 3 – Monitoring compliance with the provisions of the AVMS Code – the following action: to verify compliance with the requirements on ownership transparency and the legal regime of ownership of audiovisual media service providers. The action is set to be implemented by the end of the year.

Amendments were adopted in November 2022 introducing provisions regarding the annual reporting to the regulator by providers and distributors of media services, related to the final beneficiaries and shareholders, sources of funding and ensuring the transparency of this information to the public.

4.6.3. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works, achieved by placing quota requirements on broadcasters (Article 16), and requirements on broadcasters that support the independent production sector (Article 17). Relevant definitions were examined above (section 4.6.1.2.) The table below outlines the national framework and assesses alignment with the 2018 AVMS Directive.

Table 100. 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
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²¹⁰ See: the European Network of National Human Rights Institutions (ENNHRI) (July 2021): Moldova, Rule of Law Report, <http://ennhri.org/rule-of-law-report-2021/moldova/>; Freedom House (July 2021): Moldova: Stakeholder Submission on Media Freedom for the Universal Periodic Review: <https://freedomhouse.org/article/moldova-stakeholder-submission-media-freedom-universal-periodic-review>; and the European Commission (2021), “Joint Staff Working Document – Association Implementation Report on the Republic of Moldova”: https://www.eeas.europa.eu/sites/default/files/swd_2021_295_f1_joint_staff_working_paper_en_v2_p1_153564_9.pdf

²¹¹ 2022 Audiovisual Council Action Plan, adopted in February 2022: <http://www.audiovizual.md/news/fost-aprobat-planul-de-ac-iuni-pentru-anul-2022-al-consiliului-audiovizualului>.



The use of majority quota obligations (for example more than 50% of content) to promote European works	Yes – aligned with the 2018 AVMSD in the law amending the AVMS Code. However, these provisions will not enter into force for two years after the law enters into force.	Law on amendment of the Code of Audiovisual Media Services, No. 143/2022 (2022), Article 5 (2) and Article 6 of the AVMS Code
Exceptions to this rule	Yes – aligned with the 2018 AVMSD in the Draft Law proposing amendments to the AVMS Code. Exceptions regarding content: news, sports events, games, advertising, teletext and teleshopping; and services – local television and teleshopping.	As above, Article 6 (4) and Article 6 (8)
Rules where a minimum percentage of content (for example 10%) should be European works created by producers who are independent of broadcasters	Yes – aligned with the 2018 AVMSD in the law amending the AVMS Code. However, these provisions will not enter into force for two years after the law enters into force.	As above, Article 6 (6)

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

As can be seen above, with the new Law on amendment of the Code of Audiovisual Media Services, the national legislative framework aligns with the 2018 AVMS Directive regarding the obligations on linear services. However, these provisions will not enter into force for two years after the law enters into force. The Directive also increased the obligations of non-linear on-demand audiovisual media services regarding the promotion of European works (Article 13).

Table 101. 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.	Yes – aligned with the 2018 AVMSD in the law amending the AVMS Code. However, these provisions will not enter into force for two years after the Law enters into force.	Law on amendment of the Code of Audiovisual Media Services, No. 143/2022 (2022) Article 6 (5)
Exemptions for AVMS providers with a low turnover or a low audience?	Not mentioned.	
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?	Not mentioned.	



AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Inclusion of any financial contribution obligations for services targeting the country?	Not mentioned.	

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

With the new Law on amendment of the Code of Audiovisual Media Services, the national legislative framework will (after two years) align almost completely with the 2018 AVMS Directive as regards both linear and on-demand audiovisual media services. The issue of exempting on-demand services with a low turnover or a low audience has not been addressed. The law also requires audiovisual media services to submit, in their annual reports to the Audiovisual Council, information regarding compliance with these provisions (proposal for an Article 6 (7)) of the AVMS Code).

4.6.4. 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 102. 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. ACC must be recognisable; surreptitious ACCs are forbidden; as is the use of subliminal techniques in ACCs.	AVMS Code (2018), Article 63
ACC shall not prejudice respect for human dignity; promote discrimination; encourage behaviour prejudicial to health or safety; encourage behaviour grossly prejudicial to the protection of the environment	Yes – aligned with the 2018 AVMSD.	As above, Article 63(4)
ACC for the prescription of medicinal products and medical treatment shall be prohibited	Yes – aligned with the 2018 AVMSD.	As above, Article 63(3) b) ²¹²

²¹² Regulated in detail by Decision No. 13, 11 February 2010 on the broadcasting of advertisements for pharmaceutical products within the services of radio and TV programmes: <https://www.legis.md/cautare/downloadpdf/39688>.



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD. The sponsorship of audiovisual news programmes and current affairs and information programmes are prohibited. No sponsorship by natural or legal persons whose main activity is the manufacture and/or marketing of cigarettes and other tobacco products, and electronic cigarettes.	As above, Article 65 (2) and (3)
No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes	Yes – aligned with the 2018 AVMSD.	As above, Article 69
PP should not affect the responsibility and editorial independence of the media service provider; directly encourage purchase or rental of the product; give undue prominence to the product	Yes – aligned with the 2018 AVMSD.	As above, Article 69 (2)
Viewers shall be clearly informed of the existence of product placement in a programme	Yes – aligned with the 2018 AVMSD.	As above, Article 69 (3)
Are there rules limiting the proportion of television advertising spots/teleshopping spots throughout the day, or during particular time periods?	Yes – aligned with the 2010 AVMSD. The proportion of advertising spots and teleshopping spots within one hour may not exceed 20% or 12 minutes.	As above, Article 67(1)
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Yes – aligned with the 2018 AVMSD. Exceptions include self-promotion, sponsorship, product placement, and also free communications of general interest, humanitarian interest, public interest, and free electoral advertising.	As above, Article 67(2)

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

The legal framework covering ACCs is closely aligned with the 2018 AVMS Directive. In addition, as outlined below under Chapter 5, the provisions related to VSPs do not include the rules on ACCs. There is no decision of the Audiovisual Council which regulates the rules on ACCs. However, the Audiovisual Council, with Council of Europe technical assistance, is working at present on a new Regulation on audiovisual content and on a new Regulation on commercial communications. Both activities are included in the 2022 Annual Plan, approved on 16 February 2022 and published on its webpage.²¹³

²¹³ 2022 Audiovisual Council Action Plan, adopted in February 2022: <http://www.audiovizual.md/news/fost-aprobat-planul-de-ac-iuni-pentru-anul-2022-al-consiliului-audiovizualului>.



4.6.5. 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 4.6.1.2 above. The establishment of the jurisdiction of VSPs was covered under section 4.6.1.3 above.

Table 103. Obligations on video-sharing platforms regarding content

AVMSD and provisions on VSPs (Article 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 (verbatim) with the 2018 AVMSD.	Audiovisual Content Regulation (2019), paragraph 237
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others	Not mentioned.	
VSPs should clearly inform users where programmes and user-generated videos contain ACC	Not mentioned.	
VSP should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Not mentioned.	

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

Although the AVMS Code refers to VSPs, particularly with regard to definitions and the competences of the Audiovisual Council vis-à-vis these platforms (mainly with regard to control and sanctions), the Code does not contain any other provisions on VSPs. However, in a Decision on the Regulation of Audiovisual Content from 2019 (the Audiovisual Content Regulation), additional relevant provisions have been provided. The regulation requires the protection of minors and the general public from harmful and illegal content (as prescribed under Article 28b (1) of the 2018 AVMS Directive). There are no provisions regarding ACCs on VSPs. As can be seen below, the main focus of the Audiovisual Content Regulation in relation to VSPs, is a very detailed provision on a system of complaints and notifications, and removal of content.



Table 104. Obligations on video-sharing platforms – measures and supervision

AVMSD and provisions on VSPs (Article 28b) Measures introduced by national rules?	In line with AVMSD	References
Adapting Terms and Conditions for users of VSPs to include obligations relevant to content and/or ACCs	Partly aligned with 2018 AVMSD. VSP providers must expressly provide in their conditions of use of their services that they do not store terrorist content.	Audiovisual Content Regulation (2019), paragraph 240
Possibility to declare the presence of ACCs in user-generated video	Not mentioned.	
Reporting or flagging systems to report harmful content to the VSP provider	Partly aligned with 2018 AVMSD. This constitutes more of a notification and take-down system (see more detail in the main text).	As above, Chapter XI, paragraphs 238 and 242
Age verification systems for users	Yes – aligned with 2018 AVMSD, with reference to conditional access.	As above, Chapter V, section II, paragraph 138
Content rating systems for users	Not mentioned.	
Parental control systems	Yes – aligned with 2018 AVMSD. The rules on provision of parental controls, conditional access etc, apply to both AVM services and to VSPs.	As above, Chapter V, section II, paragraphs 141 and 157
Procedures for complaints to the VSP	Partly aligned with 2018 AVMSD. This constitutes more of a notification and take-down system (see discussion in the main text).	Chapter XI, paragraphs 238 and 242
Providing media literacy measures and tools and raising users' awareness of those measures and tools	Not mentioned.	
Implementation and supervision		
Protection of the personal data of minors	Not mentioned, other issues concerning the privacy of minors are dealt with.	Audiovisual Content Regulation (2019), chapter V
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	Partly aligned with the 2018 AVMSD. There is no specific mention of assessing the appropriateness of measures taken. The Broadcasting Council shall annually control, <i>ex officio</i> , how legal provisions in force are enforced by AVMS providers, VSP service providers and media service distributors. Results will be included in the annual activity report of the Broadcasting Council.	AVMS Code, Articles 83 (15) and 75 (3h)



Are there out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and can users assert their rights before a court in relation to VSPs?	Yes – aligned with the 2018 AVMSD. Article 83 (3-15) outlines in detail the role of the Broadcasting Council in dealing with complaints (regarding all media and VSPs). The Broadcasting Council shall fully contribute to settling complaints and petitions amicably (Article 83 (13)). *** The Audiovisual Content Regulation (2019) states that in the event of any discrepancies between the VSP providers and the authors of the notifications/users, the disputes between the parties shall be settled in court.	As above, Article 83 (3-15) *** Audiovisual Content Regulation (2019), paragraph 249
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Yes – aligned with the 2018 AVMSD.	Audiovisual Content Regulation (2019), Chapter XI, paragraph 250

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

The Audiovisual Content Regulation (2019) provides detailed rules on the protection of minors, the classification of programmes, warning measures, age verification systems, parental controls and other technical measures (Chapter V). These rules are addressed to linear and on-demand audiovisual media services, and to video-sharing platforms (according to Chapter XI, paragraph 372a). VSP providers shall be subject to notification procedures, as appropriate, of any notification from any person and/or competent authority that signals the presence on the platform of certain illegal or terrorist content (paragraph 238).

Paragraph 242 provides very detailed rules on how VSPs should respond to complaints/notifications. VSP providers shall act promptly in the case of notifications indicating the presence of illegal content on their servers. They must: remove content within 24 hours of a notification of child pornography and of content that incites violence; remove content within three days of a notification of content that includes hate speech and any form of hatred based on intolerance and discrimination; remove content within five days of a notification of content that harms human dignity; remove content within five days of a notification of content praising totalitarian regimes, past and present, perpetrators of crimes and abuses of these regimes, as well as those denigrating their victims; remove content within 15 days of a notification of content related to copyright infringement. Content related to terrorism is dealt with in detail under paragraphs 246, 247 and 248.

Regarding the role of the NRA, the Audiovisual Council will develop methodologies for monitoring the content of VSP services (AVMS Code, Article 75 (3h)), and will annually control whether the provisions are enforced by VSP service providers (Article 83 (15)). The Audiovisual Council also plays a role in dealing with complaints (Article 83 (3-15)). In summary, the approach to the regulation of VSPs does not reflect the general practice of requiring that VSPs introduce appropriate mechanisms in order to protect the public from



harmful and illegal content, where the role of the NRA is to assess the appropriateness of these measures.

4.6.6. Concluding remarks and summary of findings

The legal framework in Moldova, is relatively well aligned with the 2018 AVMS Directive (2018/1808), via the legislation in force. The key legislative documents in relation to implementation of the EU *acquis* are the AVMS Code (2018) and the Audiovisual Content Regulation (2019). A controversial amendment to the AVMS Code took place in November 2021 with regard to the appointment and dismissal of the Audiovisual Council (NRA). The Audiovisual Council was dismissed soon after.

Several recent amendments aim to update the rules for European works, and these will come into force in two years. The same set of amendments also address issues such as “false information” and “disinformation.” This has been widely debated with regard to the potential impact on freedom of expression.

Some areas are not fully aligned with the 2018 AVMS Directive, including the provisions on jurisdiction and freedom of reception and retransmission, on VSPs, on providing accessible content for people with disabilities, and issues regarding the independence of the NRA. Several initiatives are underway to address further reform, including a consultative group at the national parliament that will assist in the process of improving the legislative framework. Although some amendments to the law were adopted in July 2023, they did not address the key issues outstanding in the alignment with the AVMS. One amendment addresses the issue of conflict of interest of Council members.

Also in July 2023, the Parliament approved the National Media Development Program for 2023-2026. Among others, this aims to ensure: “a sufficient and efficient legal framework; a legal and economic framework which ensures sustainability and, consequently, editorial independence; a process of professionalization of the sphere which complies with the newsrooms’ needs and challenges.”

The list²¹⁴ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

²¹⁴ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



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

Table 105. Relevant documents, reports and opinions

Title	Main topics/themes	Link
Independent Journalism Center (2022): Memorandum on Press Freedom in Moldova	Press Freedom	In Romanian: https://cji.md/wp-content/uploads/2022/05/ZLP_Memoriul_privind_libertatea_pr_esei_2021-2022_CJI.pdf
European Commission (2021), "Joint Staff Working Document – Association Implementation Report on the Republic of Moldova"	EC report on the Republic of Moldova's progress regarding implementation of the Association Agreement	In English: https://www.eeas.europa.eu/sites/default/files/swd_2021_295_f1_joint_staff_working_paper_en_v2_p1_1535649.pdf
OSCE (2021): "Legal Analysis On The Law On Amendment Of The Code Of Audiovisual Media Services Of The Republic Of Moldova". Commissioned by the OSCE Representative on Freedom of the Media from Dr Joan Barata Mir	Independence of the PSB and the NRA. Appointment and dismissal of the governing bodies of the PSB and the NRA.	In English https://www.osce.org/files/f/documents/3/2/509792.pdf
Freedom House (July 2021): Moldova: Stakeholder Submission on Media Freedom for the Universal Periodic Review	Media reform, access to information, media diversity.	In English: https://freedomhouse.org/article/moldova-stakeholder-submission-media-freedom-universal-periodic-review
European Network of National Human Rights Institutions (ENNHRI) (July 2021): Moldova, Rule of Law Report	Rule of law, media ownership and diversity	In English: http://ennhri.org/rule-of-law-report-2021/moldova/
Independent Journalism Center (2021): Moldovan Press Status Index for 2021	Freedom of the press	In English: https://cji.md/wp-content/uploads/2022/02/ISPM_2021-1.pdf

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



4.6.8. Data compilation

This country report is based on information and materials supplied by the national expert Tatiana Puiu, Attorney at Law, local representative at Freedom House and member of the European Committee of Social Rights.



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

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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/Constitution of Montenegro</i>	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/Media Law, 2020</i>	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/Electronic Media Law, 2010</i> 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/Law on National Public Broadcaster Radio and Television of Montenegro, 2020</i>	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.



4.8. North Macedonia (MK)²⁴² (Country report A²⁴³)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- In North Macedonia, a Draft Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services intended to align with the 2018 AVMS Directive (2018/1808) was submitted to the Parliament of North Macedonia on 11 May 2023. The Draft law was adopted by Parliament in July 2023 and published in the Official Gazette on 17 July 2023.
- This law was elaborated in cooperation with the Ministry of Information Society and Administration, the national regulatory authority (NRA) and a range of stakeholders in the context of a project launched in September 2022 by the European Commission financed under the Instrument for Pre-accession Assistance (IPA) 2020 which aims to implement a range of necessary media reforms in 2023.
- All of the general principles and key values are covered in the national legislative framework.
- The new amendments introduced changes to the funding of the national regulatory authority (NRA) and hence dealt with some issues regarding financial stability and independence. However, Parliament has still not appointed the new Council of the Authority since amendments to the Law in 2018.

²⁴² The country report on North Macedonia incorporates the feedback received from Emilija Petreska-Kamenjarova, Assistant Head of the Programme Affairs Department at the Agency for Audio and Audiovisual Media Services of North Macedonia, during the checking round with the national regulatory authorities.

²⁴³ Country report A outlines the findings of Questionnaire A in relation to Group I (Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and the Republic of Serbia) and Group II (Georgia, Moldova, Ukraine, Tunisia) of the study.



- Separately, additional amendments to the Law on Audio and Audio-Visual Media Services that introduce a fund for state advertising among others have been submitted to Parliament in North Macedonia (November 2023). These changes are opposed by a broad range of stakeholders. The provisions also introduce automatic renewal of broadcast licences with very limited and problematic criteria. These undermine the independent role and competence of the NRA in adopting decisions in this area.
- Civil society, the NRA and international organisations are important drivers of change with regard to media reforms.
- The list²⁴⁴ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.8.1. Introduction

North Macedonia, in the context of this research, 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 had to fulfil the conditions set out in the AVMS Directive.

The Stabilisation and Association Agreement (SAA)²⁴⁵ with the European Union, the first in the region, was signed in 2004. Since 2009, the Commission has continuously recommended that the Council open accession negotiations with North Macedonia, a candidate country since 2005. In March 2020, the European Council endorsed the Council's decision to open accession negotiations with North Macedonia. On 19 July 2022, the first Intergovernmental Conference on accession negotiations took place with North Macedonia. The Commission immediately launched the analytical review of the EU *acquis* (screening) process, which is the first step in the negotiating process.

²⁴⁴ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

²⁴⁵ Stabilisation and Association Agreement with North Macedonia: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4314937>.



4.8.1.1. Relevant framework: current status and developments

The table below outlines the national legislative framework for the audiovisual media sector, including mainly those acts of most relevance to the issues addressed here. It is important to note that this country report 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, the independence of the national regulatory 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 (ACCs) and video-sharing platforms (VSPs).

Regarding the main legislative framework – this is the Law on Audio and Audiovisual Media Services (hereinafter also referred to as LAAMS) – where only the version of the Law from 2013 has been translated into English, but not all the subsequent amendments. Only the most significant amendments that relate to the issues addressed in this country report are included in detail in the table below. A consolidated version of the Law is not publicly available in either Macedonian or English. Similarly, there is an extensive range of guidelines and rulebooks and, for the sake of clarity, only those that relate to the issues addressed in this country report are included in the table. All relevant links appear in this first table. Another key document of reference is the 2023 Law on Changes and Amendments to the LAAMS, adopted by the Parliament on 17 July 2023.

Table 122. Legal framework

Title	Status	Relevance	Link
Constitution of the Republic of North Macedonia Устав на Република Македонија (Macedonian)	In force	Fundamental rights	Macedonian: https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf English: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspix
Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Закон за аудио и аудиовизуелни медиумски услуги (Macedonian)	In force	Audiovisual Media Law (amended in 2014, 2016, 2017, 2018, 2019, 2020 2021, and 2023)	Links not available In the Official Gazette of the RNM Paid content
Law Changing and Amending the LAAMS (20 September 2017)	In force	New funding model for the public service broadcaster (PSB), the NRA and the	Macedonian:



Title	Status	Relevance	Link
Закон за изменување и дополнување на Законот за аудио и аудиовизуелни медиумски услуги (Macedonian)		public broadcasting enterprise	https://avmu.mk/wp-content/uploads/2017/05/Zakon-za-audio-i-audiovizuelni-mediumski-uslugi-izmena-od-20.09.2017.pdf
Law Changing and Amending the LAAMS (31 December 2018) Закон за изменување и дополнување на Законот за аудио и аудиовизуелни медиумски услуги (Macedonian)	In force	Ban on state advertising Changes to nomination and election of members of the NRA, and the council of the PSB Incitement to hatred	Macedonian: https://bit.ly/3KDUZIL
Law on Media (26 December 2013) Закон за медиуми (Macedonian)	In force	Media sector law: Freedom of expression, protection of minors, protection of sources, public information on address, etc., right of correction and reply, transparency of media ownership	Macedonian: https://avmu.mk/wp-content/uploads/2017/05/Zakon_za_mediumi_mk.pdf English: https://avmu.mk/wp-content/uploads/2017/05/LAW_ON_MEDIA_as_published_in_the_Official_Journal.pdf
Law Amending the Law on Media (23 January 2014) Закон за изменување на Законот за медиуми (Macedonian)	In force	Online media taken out of the scope of the Law	Macedonian: https://avmu.mk/wp-content/uploads/2017/11/Zakon-za-izmenuvanje-i-dopolnuvanje-na-Zakonot-za-mediumi-13_14.pdf English: https://avmu.mk/wp-content/uploads/2017/05/Prevod_Zakon_za_mediumi_final.pdf
Law on Changing and Amending the Law on Audio and Audio-Visual Media Services – LAAMS (2023) Предлог на Закон за изменување и дополнување на Законот за аудио и аудиовизуелните медиумски услуги (Macedonian)	Adopted July 2023	Amendments to the current LAAMS in order to align with the AVMS Directive. Changes to the mechanism of funding PSB and NRA to improve financial sustainability.	Macedonian: https://avmu.mk/wp-content/uploads/2023/08/Zakon-za-izmenuvanje-i-dopolnuvanje-na-ZAVMU-SVRSM-br.154-2023.pdf



Title	Status	Relevance	Link
<p>Proposal of a Law to amend and supplement the Law on Audio and Audiovisual Media Services, following a short procedure</p> <p>Предлог на Закон за изменување и дополнување на Законот за аудио и аудиовизуелни медиумски услуги, по скратена постапка</p>	In Parliament 02/11/2023	<p>(among others) it introduces obligation for Government to spend 0,1% of the realized tax revenues in the previous year on state campaigns and providing a division of this annual funding with 65% to go to the 5 national DTT channels.</p> <p>Introduces an automatic update of licences based on limited and problematic criteria and undermining the independent role of the NRA in deciding on these issues.</p>	
<p>Criminal Code of the Republic of North Macedonia</p> <p>Кривичен законик (Macedonian)</p>	In force		<p>Macedonian: https://dejure.mk/zakon/krivichen-zakonik</p> <p>English: https://www.refworld.org/pdfid/6290cf954.pdf</p>
Relevant secondary legislation: by-laws, codes, etc. in force			
<p>Rulebook on the Protection of Minors (21 November 2014)</p> <p>Правилник за заштита на малолетните лица (Macedonian)</p>	In force	Protection of minors	<p>Macedonian: https://avmu.mk/wp-content/uploads/2017/06/Pravilnik_za_zastita_na_malloleznite_lica.pdf</p> <p>English: https://avmu.mk/wp-content/uploads/2017/06/Rulebook-on-protection-of-minors.pdf</p>
<p>Guide for Monitoring “hate speech” (2014)</p> <p>Водич за мониторинг на „говорот на омраза (Macedonian)</p>	In force	Monitoring hate speech	<p>Macedonian: https://avmu.mk/wp-content/uploads/2017/05/Vodic-za-monitoring-za-govorot-na-omraza-Mak.pdf</p> <p>English: https://avmu.mk/wp-content/uploads/2017/11/Guide-to-monitor-hate-speech-FINAL-9.pdf</p>



Title	Status	Relevance	Link
<p>Rulebook on Broadcasting European Audiovisual Works and Works by Independent Producers (04 December 2014)</p> <p>Правилник за емитување европски аудиовизуелни дела и дела од независни продуценти (Macedonian)</p>	In force	European works	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Pravilnik_za_emituvanje_audiovizuelni_dela.pdf</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Rulebook_on_EU_Works.pdf</p>
<p>Guidelines for Fulfilling the Obligations for an Impressum and Information Available to Users (09 October 2018)</p> <p>Упатство за исполнување на обврските за импресум и информации достапни за корисниците (Macedonian)</p>	In force	Transparency of ownership	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2018/10/Upatstvo-za-impresum.pdf</p>
<p>Rulebook on the Manner of Publication of Data on the Operation of Broadcasters (27 February 2015)</p> <p>Правилник за начинот на објавување на податоците за работењето на радиодифузерите (Macedonian)</p>	In force	Transparency of ownership	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Pravilnik_za_nacinot_na_objavuvanje_na_podatoci_za_raboteneto_na_radiodifuzerite.pdf</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/ANG_Rulebook_on_the_manner_of_publication_of_data_on_the_operation_of_broadcasters.pdf</p>
<p>Rulebook on the Form and Contents of the Notification for Change of Ownership Structure (19 November 2014)</p> <p>Правилник за формата и содржината на известувањето за промена на сопственичката структура (Macedonian)</p>	In force	Transparency of ownership	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Pravilnik_za_formata_i_sodrzhinata_na_izvestuvanje_za_promena_na_Sopstvenickata_struktura.pdf</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Rulebook_on_the_form_and_contents_of_the_notification_for_change_</p>



Title	Status	Relevance	Link
			of_ownership_structure.pdf
<p>Guidelines on Implementing Product Placement Rules (30 December 2014)</p> <p>Упатство за примена на одредбите за пласирање производи (Macedonian)</p>	In force	Product placement	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Upatstvo_za_plasiranj_e_proizvodi.pdf</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Guidelines_on_implementing_product_placement_rules.pdf</p>
<p>Rulebook on Sponsorship (12 March 2015)</p> <p>Правилник за спонзорство (Macedonian)</p>	In force	Sponsorship	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Pravilnik_za_sponsorstvo.pdf</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/ANG_Rulebook_on_sponsorship.pdf</p>
<p>Rulebook on the New Advertising Techniques (06.04.2015)</p> <p>Правилник за нови рекламни техники (Macedonian)</p>	In force	ACCs	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/Pravilnik_za_novi_reklamni_tehniki.pdf</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/05/RULEBOOK_on_advertising_techniques_final_checked.pdf</p>
<p>Media Literacy Policy (29 March 2019)</p> <p>Политика за медиумска писменост (Macedonian)</p>	In force	Media literacy	<p>Macedonian:</p> <p>https://bit.ly/3JU5V3P</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2017/06/Media-Literacy-policy-online-version.pdf</p>
<p>Policy on Providing Access to Audiovisual Media Services for</p>	In force	Accessibility of Audiovisual Media Services	<p>Macedonian:</p> <p>https://avmu.mk/wp-content/uploads/2020/1</p>



Title	Status	Relevance	Link
<p>Persons with Sensory Impairments (18 December 2020)</p> <p>Политика за обезбедување пристапност до аудиовизуелните медиумски услуги за лицата со сетилна попреченост (Macedonian)</p>			<p>2/%D0%9F%D0%BE%D0%BB%D0%B8%D1%82%D0%B8%D0%BA%D0%B0-%D0%B7%D0%B0-%D1%81%D0%B5%D1%82%D0%B8%D0%BB%D0%BD%D0%B0-%D0%BF%D0%BE%D0%BF%D1%80%D0%B5%D1%87%D0%B5%D0%BD%D0%BE%D1%81%D1%82-%D0%A3%D0%A1%D0%92%D0%9E%D0%95%D0%9D%D0%90.docx</p> <p>English:</p> <p>https://avmu.mk/wp-content/uploads/2022/02/POLICY-ON-SENSORY-IMPAIRMENTS.docx</p>

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

The Law on Audio and Audiovisual Media Services (LAAMS) aligned with the 2018 AVMS Directive, following the adoption of amendments on 17 July 2023. Since the adoption of the Law on Media and the LAAMS in 2013, there were several initiatives for systemic reforms and comprehensive changes in legislation, which came initially from the civil society sector²⁴⁶ and later from the national regulatory authority (NRA).²⁴⁷ The changes recommended by the latter included: banning state and party-political advertising to prevent reliance of the media on the ruling party/ies; strengthening the independence of the NRA and the oversight body of the public service broadcaster (PSB); providing stable and independent funding of the PSB; updating provisions regarding media concentration; developing the participatory model of the PSB by enhancing its link to the citizens; harmonising laws with regard to technological changes and the new provisions of the 2018 AVMS Directive.

Between 2013 and 2021 only partial changes were made to individual legal provisions, in order to resolve certain urgent issues on which there was a political consensus in Parliament. For example, a new model of funding the PSB, the NRA and the public broadcasting enterprise (with a fixed percentage of the state budget) was introduced

²⁴⁶ The NGO sector document entitled “Blueprint for Urgent Democratic Reforms” was a joint effort by a group of civil society organizations, academia and independent experts, published in 2016 and it covered the reforms in the media sphere. Available at:

https://www.balkancsd.net/novo/wp-content/uploads/2016/07/BP_ENG_FINAL_08.07.2016.pdf

²⁴⁷ Council of Europe (2020). Pluralism of Media Ownership in the New Media Environment: a Study for the Agency for Audio and Audiovisual Media Services, conducted by Jean-Francois Furnémont and Snezana Trpevska. Available at: <https://rm.coe.int/hf37-study-media-ownership-eng/16809f0272>.



with the amendments to the LAAMS from 2017. However, additional provisions were added to the law in 2018 allowing the Government the discretion to reduce the fixed percentage to be allocated to these organisations dependent upon other budget priorities. In relation to this, the 2022 Report stated that: *the allocation of state funds for the broadcasting sector, securing the budget for the public service broadcaster, media regulator and broadcasting public enterprise, has been further reduced in 2021, reaching 0.59 % of the total revenues realised in the year preceding the fiscal year for which the amount is prescribed.*²⁴⁸ This has implications for the financial stability of these institutions and particularly impacts on the work of the public service broadcaster and the national regulatory authority.²⁴⁹

Following strong calls from civil society and international organisations, the ban on state advertising was first enacted by a Government Decision of 2017, and then with amendments to the LAAMS of 2018. Following requests from the private media sector, the government has repeatedly tried to reintroduce this. In April 2022, the government announced a proposal to lift the ban on government advertising by amending Article 102 of the LAAMS.²⁵⁰ However, this has not happened. Amendments in 2018 also changed the procedures for nomination and election of members of the NRA and of the Council of MRT (the PSB). However, the election of these bodies was still blocked (status September 2023) in Parliament due to political disagreements.²⁵¹

In 2021 the government announced the establishment of a Media Reform Council,²⁵² but due to upcoming local elections, the election of this body did not take place. The civil society sector has repeatedly stressed the need to prepare a strategic document that will identify areas in the media legislation where it is necessary to make changes, and to start drafting new legal provisions.²⁵³

In September 2022 a major project intended to implement the necessary media reforms (in 2023) was launched with the support of the European Commission.²⁵⁴ The main beneficiary of the project is the Ministry for Information Society and Administration, while key stakeholders include the Agency for Audio and Audiovisual Media Services. The project aims to move forward the process of media reforms, namely to: revise the media legislation

²⁴⁸ European Commission (2022): COMMISSION STAFF WORKING DOCUMENT North Macedonia 2022 Report. Available at:

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf>

²⁴⁹ See also: Funding of Public Service Media in the Western Balkans - Second assessment report on the implementation of Common Funding Principles. North Macedonia. 28 February 2021.

²⁵⁰ Kalinski, V. (2022) *Government advertisements were once media corruption – now they are a public interest campaign*, Radio Free Europe, 15 April 2022.

²⁵¹ Kolovska, V. (2021) *Media reforms are by no means on the agenda of politicians*, Truthmeter, 16 December 2021. Available at: <https://vistinomer.mk/mediumskite-reformi-nikako-da-stasaat-na-dneven-red-kaj-politicharite/>.

²⁵² Maglešov, V. (2021) *The government established a Council for Media Reforms*, Prizma, 16 August 2021.

²⁵³ Trpevska, S. and Micevski, I. (2021) 'Media Sector Hotspots in North Macedonia: Decisive Reforms Long Overdue', in Esch, V. and Palm, V. (eds.) *Media Freedom in Western Balkans*. ASPEN Institute Germany. Available at: https://www.aspeninstitute.de/wp-content/uploads/2021_Aspen-Germany_Media-Freedom-in-the-Western-Balkans.pdf.

²⁵⁴ European Union for Freedom of Expression: Alignment of National Media Legislation with the EU Acquis and Media Standards: <https://pmcg-i.com/european-union-for-freedom-of-expression-alignment-of-national-media-legislation-with-the-eu-acquis-and-media-standards/>.



to harmonise with the AVMS Directive and European standards, including recommendations to ensure the capacity of the NRA, and its functioning and independence; analyse and make recommendations regarding the legal framework for new media and alignment with relevant EU *acquis* and European standards; analyse the media market and make recommendations regarding the legal framework to enhance competitiveness and pluralism; revise the legal framework and strategic documents of the public service broadcaster; analyse and make recommendations regarding the legal framework for protecting journalists' social and labour rights in line with European standards. A key deliverable of the project was supporting the Ministry in developing the 2023 Draft Law on Changes and Amendments to the LAAMS, which was adopted by Parliament on 17 July 2023.

On 7 June 2023, separate additional amendments to the Law on Audio and Audiovisual Media Services were elaborated by the Government. Several meetings with stakeholders were organised by the Ministry in June 2023 to discuss the above proposals and requested written feedback from the experts.

The proponents of these amendments²⁵⁵ produced an updated version in July 2023 and a further iteration in August 2023²⁵⁶. A new version was eventually introduced in Parliament in November 2023 with no public consultation on the final provisions.

The main issue opposed by a broad number of stakeholders is an amendment that proposes the mandatory introduction of “campaigns of public interest” (in the newest version this term is changed to “state advertising”) whereby the Government would be obliged to spend 0,1% of the realized tax revenues (determined in the last adopted final account of the budget) on such campaigns. For national campaigns, the provision states that 7% is for production of the state campaigns and 93% for broadcasting. Of this, 65% of the funds should be distributed to the national terrestrial channels and 25% to national channels distributed via cable and satellite and state level radios, and 10% for regional and local television and radio.

The estimate of this figure (0,1% of the realized tax revenues budget) based on the projected budget revenues for 2023 would be 2,3 million Euros.

This proposal has raised concerns in civil society and journalism associations as they view it as aiming to reintroduce a practice from the past. According to the European Commission report of 2018:

The extent to which government advertising had been a tool to exercise influence over broadcasters and to which the previous system had been distorting the market was reflected in the market's reaction to the loss of this revenue source, which has already had a financial impact in the broadcasting sector and has led private media to seek to measure viewership due to the need to compete for listeners and advertising.

While there is no EU *acquis* or European standards that prohibit state advertising or awareness campaigns, the aim of the proposed European Media Freedom Act is to regulate

²⁵⁵ The Macedonian Media Association (5 DTT channels) and the relevant Ministry, see: <https://ipi.media/policy-paper-support-for-public-interest-journalism-in-north-macedonia/>

²⁵⁶ An updated opinion on these amendments was provided by the Expert team of the project on August 8 2023.



state advertising. The proposed EMFA Regulation states that advertising and paid campaigns exist in many countries that are already “distorted by unfair and opaque allocation of funds.” Article 24 of the proposed EMFA also states that

*public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures.*²⁵⁷

A Parliamentary Commission will decide on campaigns of public interest at the central level. There is no independent body to decide on funding, or an independent body to audit the spending (in line with EU standards).²⁵⁸

The opinion of the NRA – the Agency for Audio and Audiovisual Media Services – with regard to these amendments also stated that the Law on Audio and Audiovisual Media Services is not the appropriate framework regarding state advertising. These issues should be subject to another or separate law, and the details in the form of regulations/instructions should be arranged by the Government, state and public institutions and local self-government.²⁵⁹

A second amendment aims to deal with certain problems in the market as concerns copyright. The proposal is to make the NRA responsible for copyright violations by the operators of cable networks. One paragraph states that:

If the Agency on the basis of program supervision carried out in accordance with this law, determines that an operator is rebroadcasting a program service that is not registered in accordance with this article, the Agency, within seven days of the program supervision carried out, will issue a decision ordering the operator immediately turn off the rebroadcast of the program service. The Agency notifies the Electronic Communications Agency and the holder of the copyright and related rights about the adopted decision. The decision to disconnect the program service with a detailed explanation is published on the website of the Agency within three days from the day of its adoption.

International experts have stated that North Macedonia needs to establish a system of collective management of rights and a copyright enforcement agency. Including copyright provisions in the audiovisual media law and assigning responsibility to the audiovisual media regulator were not considered as adequate solutions.²⁶⁰

Earlier versions of these provisions were already rejected by the Constitutional Court as being out of line with the Copyright law. In addition, the proposal for a ban on

²⁵⁷ <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>.

²⁵⁸ Summary of opinions of stakeholders and experts during discussions on the proposals in June

²⁵⁹ Agency for Audio and Audiovisual Media Services: Comments on the proposal of the Law to amend and supplement the Law on Audio and Audiovisual Media Services – August 7th 2023.

²⁶⁰ Via discussions with experts in the field of copyright, the project team discovered that proposals for draft amendments to the copyright framework have been elaborated for the Ministry of Culture but have not yet been developed as draft legislation for consultation.



such channels is not in line with derogations from freedom of reception and retransmission under the Audiovisual Media Services Directive.²⁶¹

A further amendment introduces an automatic extension of licences for nine years with some criteria included for the right to extension. The proposal deletes the following provisions in the law (Article 79 (2 and 3)):

(2) The license for television or radio broadcasting may be extended for another nine years upon request from the holder. The request shall be submitted to the Agency within six months prior to the license expiration date and it shall be extended with the decision of the Council within 30 days from the date of request receipt.

(3) When reviewing the request from the paragraph (2) of this article, the Agency should have into consideration the contribution of the broadcaster for bigger variety and pluralism on the market.

This removes the competence of the Agency in extending licenses with reference to pluralism, and interferes with the Agency's responsibility for the protection and development of pluralism in the audio and audiovisual media services, encourage and support the existence of diverse and independent audio and audiovisual media services (Article 6) and the competences of the Council of the Agency (Article 18). This is a fundamental principle of the role of national media regulatory authorities under Article 30 of the AVMS.

4.8.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of the relevant current definitions with the AVMS Directive.

Table 123. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	Yes aligned with the 2018 AVMSD	Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Article 3 (1)

²⁶¹ As above



Definitions (Article 1 AVMSD)	In line with AVMSD	References
Video-sharing platform service (VSP)	Yes aligned with the 2018 AVMSD	As above, Article 3 (28)
Programme	Yes aligned with the 2018 AVMSD	As above Article 3(2)
User-generated video	Yes aligned with the 2018 AVMSD	As above, Article 3 (29)
Editorial decision	Yes aligned with the 2018 AVMSD	As above Article 3 (26a)
Editorial responsibility	Yes aligned with the 2018 AVMSD	LAAMS as amended July 2023, Article 3 (26)
Media service provider	Yes - Aligned with the definition in the 2018 AVMSD. It emphasises that distribution companies (without editorial responsibility) are not captured by the definition.	As above, Article 3 (6)
VSP provider	Yes aligned with the 2018 AVMSD	As above, Article 3 (30)
Television broadcasting or television broadcast	Yes - Aligned with the definition in the 2018 AVMSD. It also includes digital video broadcasting, live streaming, webcasting, and near video-on-demand audiovisual media services.	As above, Article 3 (21)
Broadcaster	Yes – aligned with the 2018 AVMSD.	As above, Article 3 (17)
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD.	As above, Article 3 (4)
Audiovisual commercial communication (ACC)	Yes aligned with the 2018 AVMSD	As above, Article 3 (5)
Television advertising	Yes - Aligned with the definition in the 2018 AVMSD. It also includes the notion of advertising as the promotion of an idea or activity or in order to achieve a specific effect (relating to political or “issue advertising”).	As above, Article 3 (19)
Surreptitious ACC	Yes – aligned with the definition in the 2018 AVMSD.	As above, Article 3 (14)
Sponsorship	Yes aligned with the 2018 AVMSD	As above, Article 3 (20)
Teleshopping	Yes - Aligned with the 2018 AVMSD. It further distinguishes between teleshopping spots and teleshopping windows.	As above, Article 3 (24) and (25)
Product placement	Yes aligned with the 2018 AVMSD	As above, Article 3 (15)
European works	Yes – aligned with the 2018 AVMSD.	As above, Article 3 (9)



Definitions (Article 1 AVMSD)	In line with AVMSD	References
Independent producer	Aligns with the standard definitions of an “independent producer”: its share in the capital of a broadcaster shall not exceed 25%; and the broadcaster does not hold a share in the capital of the producer.	As above, Article 3 (11),
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	<p>Yes - Aligned with the 2018 AVMSD in that the provisions address the most harmful content, such as gratuitous violence and pornography.</p> <p>Definitions of harmful content vis-à-vis the protection of minors, including a definition of gratuitous violence.</p> <p>***</p> <p>Article 2 (of the Rulebook on the Protection of Minors) defines “harmful content” as any programme that can adversely affect minors including descriptions, scenes or presentations of violence, eroticism, sexual conduct prohibited by law, indecent (vulgar) language, suggestible social forms of behaviour which are easy to imitate and are dangerous to health and safety, behaviour offensive to human dignity, etc.</p> <p>It includes an elaborated definition of “violence”.</p>	<p>As above, Article 50 (1 and 2)</p> <p>***</p> <p>Rulebook on the Protection of Minors (21 November 2014)</p> <p>Article 2 (1), lines 2 and 3</p>
Definition of incitement to hatred (or equivalent)	<p>Article 20 if the Constitution prohibits encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance</p> <p>***</p> <p>Article 417 (3) of the Criminal Code criminalises the spread of ideas that advocate or instigate racial hatred or racial discrimination.</p> <p>***</p> <p>The LAAMS contains provisions on incitement to hatred, and these align with the 2018 AVMS Directive in prohibiting incitement to violence or hatred directed against a group of persons or a member of a group (Article 48 (Special prohibitions)).</p> <p>In addition, the provision prohibits programmes that threaten national security, call for the violent destruction of the constitutional order of the Republic of North Macedonia, or call for military aggression or armed conflict.</p> <p>Paragraph 1 now includes a prohibition of “racism and xenophobia”. Paragraph 2 prohibits incitement to hatred or violence. Paragraph (3) emphasises that the special prohibitions from Paragraphs (1 and 2) of this Article shall be in accordance with the practice of the European Court of Human Rights (ECtHR).</p> <p>***</p> <p>The Guide for Monitoring Hate Speech includes, verbatim, the definition of hate speech from the Council of Europe’s Recommendation No. R (97) 20 on hate speech:</p> <p><i>[...] covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by</i></p>	<p>Article 20 – Constitution of the Republic of North Macedonia</p> <p>***</p> <p>Article 417 (3) - Criminal Code of the Republic of North Macedonia</p> <p>***</p> <p>Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023, Article 48 (1) and (2)</p>



Definitions (Article 1 AVMSD)	In line with AVMSD	References
	<i>aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.</i> ²⁶²	*** Guide for Monitoring “Hate speech” (2014) – pages 5 and 10

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

The necessary changes regarding the updating of certain definitions (related to ACCs) and the inclusion of definitions relevant to VSPs were addressed in the Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) adopted by Parliament in July 2023. Definitions and provisions that deal with incitement to hatred are included and are also compatible with the 2018 AVMS Directive, and with other Council of Europe standards. The Agency for Audio and Audiovisual Media Services has also developed a Guide for Monitoring Hate Speech.

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

The national legislative framework, as can be seen below, closely aligns with the AVMS Directive in relation to the establishment of jurisdiction for linear audiovisual media services.

²⁶² Available here: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b.

The same guide includes, verbatim, the definition of “racist and xenophobic material” from the Additional Protocol to the Convention on Cybercrime: [racist and xenophobic material] means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors. Available here: <https://rm.coe.int/168008160f>.

**Table 124. Jurisdiction**

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers.	Yes – aligned with the 2018 AVMSD	LAAMS as amended July 2023, Article 46
Article 2 (5a). Requirement that AVMS providers inform the competent NRAs or bodies about any changes that may affect the determination of jurisdiction.	Yes – aligned with the 2018 AVMSD	As above, New Article 46 (5)
Article 2 (5b). Requirement to maintain up to date list of the AVMS providers under national jurisdiction	Yes – aligned with the 2018 AVMSD. The NRA has an obligation to establish and maintain registries of all the broadcasters (Article 66) and of the on-demand AVMS (Article 57). A specific obligation related to the provisions on jurisdiction is included in the LAAMS under Article 46 (6)	As above, Article 46 (6)
Article 28a (paragraphs 1-5) regarding the establishment of the jurisdiction of VSPs.	Yes – aligned with the 2018 AVMSD	LAAMS as amended July 2023, new Article 144a
Article 28a (paragraph 6). Requirement that an up-to-date list of the VSP platform providers established or deemed to be established on their territory be maintained.	Yes – aligned with the 2018 AVMSD	LAAMS as amended July 2023, new Article 144a (4)
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing an opinion on jurisdiction.	Not mentioned in the current law	

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

The Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) adopted by Parliament in July 2023 aligns with the Directive and also with the new Article 2 (5a and 5b) of the Directive. In addition, the Law now includes VSPs in its scope, with Article 28a aligned in a new Article 144a. The table below examines the principle of freedom of reception and retransmission for audiovisual media services.

Table 125. 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 – aligned with the 2018 AVMSD Article 44 of the current LAAMS is aligned with the provisions of Article 3 (1) of both the 2010 AVMSD and	LAAMS (2013) as amended July 2023, Article 44



	the 2018 AVMSD with regard to the principle of freedom of reception and retransmission.	
Article 3 (2) – derogations from the principle of freedom of reception and transmission.	Yes – aligned with the 2018 AVMSD Article 45 amended to align with Article 3(2) of the AVMSD, and also to provide procedures in relation to services from countries party to the ECTT	As above, Article 45

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

The key amendments introduced by the 2018 AVMS Directive include updates to the circumstances wherein a country (member state) can derogate from the principle of freedom of reception and retransmission. The 2018 AVMS Directive also updates the procedure for notifying the European Commission regarding derogations, and the procedure for resolving issues arising under Article 3. This also includes the new role of the ERGA (European Regulators Group for Audiovisual Media Services) in providing opinions on issues of derogation. The Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) adopted by Parliament in July 2023 aligns with the legislative framework regarding derogations.

4.8.2. 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 126. General principles and key values

General principle/key value	Relevant provision/provisions	References
Principle of non-discrimination	<p>Article 54 of the Constitution addresses the principle of non-discrimination</p> <p>***</p> <p>Article 417 (1) of the Criminal Code criminalises discrimination, while paragraph 3 criminalises the spread of ideas that advocate or instigate racial hatred or racial discrimination.</p> <p>***</p> <p>Article 47a covers principles of audiovisual media services: protection of the privacy and dignity of people and equality of freedoms.</p> <p>Article 48 (1) clearly prohibits the airing of content that incites or spreads discrimination.</p> <p>Article 53 (4): audiovisual commercial communications must not include or promote any kind of discrimination on the grounds of gender, race, ethnicity, nationality, religion or conviction, disability, age or sexual orientation.</p> <p>Article 110 (1): the PSB is required to provide programming for all segments of society without any discrimination, taking into account the special groups within the society; the PSB should also contribute to the respect and promotion of people's fundamental human rights and freedoms, their privacy, dignity, reputation and honour, as well as promoting tolerance, understanding and respect for differences, the sense of peace, justice, democratic values and institutions, the protection of minors, gender equality, non-discrimination and contributing to the benefits of civic society.</p> <p>The new amendments transformed the "Principles of Broadcasting" to "Principles of audiovisual media services" in a new article 47a to ensure inclusion of video-on-demand services. A new Article 144c obliges video-sharing platforms to adhere to Article 48.</p>	<p>Article 54 - Constitution of the Republic of North Macedonia</p> <p>***</p> <p>Article 417 - Criminal Code of the Republic of North Macedonia</p> <p>***</p> <p>LAAMS (2013) as amended July 2023,</p> <p>Articles 47a, 48 (1), 48 (2), 53 (4), 61 (1) and 110 (1), 144c</p>



General principle/key value	Relevant provision/provisions	References
<p>Prohibition of incitement to hatred and incitement to violence</p>	<p>Article 20 of the Constitution prohibits encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance</p> <p>***</p> <p>Article 417 (3) of the Criminal Code criminalises the spread of ideas that advocate or instigate racial hatred or racial discrimination.</p> <p>***</p> <p>Article 48</p> <p>Paragraph 1 was amended to include the prohibition of content, “the dissemination of which, constitutes an illegal activity, including public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia.” Paragraph 2 prohibits incitement to hatred or violence. Paragraph (3) emphasises that the special prohibitions from Paragraphs 1 and 2 of this Article shall be in accordance with the practice of the European Court of Human Rights (ECtHR).</p> <p>Article 144c obliges video-sharing platforms to adhere to Article 48.</p> <p>***</p> <p>The NRA’s Guide for Monitoring Hate speech (2014) reflects the practice and jurisprudence of the ECtHR. To rule that a broadcaster is responsible for hate speech on its programming, the NRA must prove that the restriction of the freedom of expression is prescribed by law, its aim is legitimate, and it is necessary in a democratic society (tripartite test of the Court).</p>	<p>Article 20 – Constitution of the Republic of North Macedonia</p> <p>***</p> <p>Article 417 (3) - Criminal Code of the Republic of North Macedonia</p> <p>***</p> <p>LAAMS (2013), as amended 2023,</p> <p>Articles 48 (1, 2), 144c.</p> <p>***</p> <p>Guide for Monitoring Hate speech (2014)</p>



General principle/key value	Relevant provision/provisions	References
Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism	<p>Article 349-b (3) of the Criminal Code criminalises any public calls for the perpetration of terrorist offences.</p> <p>Article 193-a deals with the production and distribution of child pornography</p> <p>Article 394-d covers the spreading of racist and xenophobic material by means of a computer system.</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD. Article 48 (1) was amended to include the prohibition of content, “the dissemination of which, constitutes an illegal activity, including public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia.” The Draft Law under a new Article 144c obliges video-sharing platforms to adhere to Article 48.</p> <p>Also, airing programmes (Article 48 (1)), ACCs (Article 53 (4)) and retransmitting foreign programmes (Article 45 (2 and 3)) that contain incitement to hatred based on race is prohibited. Incitement to hatred based on origin and nationality is also prohibited in Article 48 (1). Airing or retransmitting child pornography is prohibited in Article 50 (5).</p>	<p>Criminal Code of the Republic of North Macedonia</p> <p>Article 349-b (3), Article 193-a, Article 394-d</p> <p>***</p> <p>The LAAMS (2013) as amended in 2023</p> <p>Articles 45 (1, 2 and 3), 48 (1), 53 (4), 50 (5), 144c</p>

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

Each of these first three principles: non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content are covered in the legislative framework. The LAAMS was updated in 2018 to widen the list of grounds on which hate speech is prohibited, as well as to introduce punitive measures for hate speech in Article 147. In addition, the NRA has guidelines regarding the monitoring of hate speech. The Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) introduced the prohibition of content “the dissemination of which, constitutes an illegal activity, including public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia”. The LAAMS now also extends all of these prohibitions to video-sharing platforms (new Article 144c).

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

The table below indicates the framework for the protection of freedom of expression. It includes provisions from: the Constitution, which also guarantees the right of access to information, the right of reply, and the protection of journalistic sources; the Law on Media and the LAAMS. The table also highlights the self-regulatory regime of the Association of Journalists in relation to their commitment to promote and protect freedom of expression.



Table 127. Freedom of expression

General principle/ key value	Relevant provision/provisions	References
Freedom of expression/freedom of speech/access to information/protection of journalistic sources	The Constitution, under Article 16, protects freedom of expression, freedom of speech, access to information, the right of reply and correction, and the protection of journalistic sources. It also prohibits censorship.	Constitution of the Republic of North Macedonia (1991 with eight amendments) Article 16
Freedom of expression/freedom of the media	Article 3 (1) guarantees freedom of expression and freedom of the media, while 3 (2) determines in more detail what freedom of expression includes. Article 3 (3) provides that freedom of the media may be restricted only in accordance with the Constitution of the Republic of North Macedonia.	Law on Media (26 December 2013; 23 January 2014) Article 3
Freedom of expression	Article 6 (1) emphasises the role of the NRA in protecting and developing pluralism and in encouraging the existence of diverse and independent audio and audiovisual media services. Under a new Article 47a – Principles of audiovisual media services – services are obliged to respect programme principles, including: the objective and unbiased equal treatment of diverse views and opinions, enabling the free creation of a public opinion on individual events and issues; the autonomy, independence and accountability of editors, journalists and other authors involved in the creation of programmes and editorial policy.	LAAMS (2013), as amended 2023, Articles 6 (1) and 47a
Media self-regulation/freedom of the media/ prevention of censorship	The Code of Journalists is implemented by the Council of Media Ethics, which is a self-regulatory body and it also covers online media. The general principles of the Code of Journalists include, <i>inter alia</i> , the following points: that freedom of the media is an inalienable right; that journalists have a role in imparting information, ideas and opinions and the right to comment; it is the right and duty of journalists to strive to prevent censorship and the distortion of the news; and that journalists will defend human rights, dignity and freedom, respect the pluralism of ideas and attitudes, contribute to strengthening the rule of law and to controlling the government and other public institutions.	Code of Journalists of North Macedonia ²⁶³ Guidelines for Ethical Reporting for Online Media ²⁶⁴

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

The principle of freedom of expression is enshrined in the legislative framework in North Macedonia. According to the information provided in the European Audiovisual Observatory's survey, a current concern regarding media freedom is Article 76-e of the

²⁶³ Кодекс на новинарите на Македонија.

²⁶⁴ Насоки за етичко известување на онлајн медиумите.



Electoral Code²⁶⁵ adopted in 2018, which provides that paid political advertising in the media, during the election campaign, is paid from the state budget. Several organisations have expressed concern regarding this and the potential for abuse of the media for political purposes, whereby this provision creates a clientelist relationship between the media, the state, and political parties. Concern regarding this practice was expressed by the association of journalists (AJM),²⁶⁶ the State Commission for the Prevention of Corruption,²⁶⁷ various civil society organisations²⁶⁸ and the Agency for Audio and Audiovisual Media Services.²⁶⁹

According to the European Commission's 2022 Report on North Macedonia:

*In September 2021, Parliament adopted amendments to the Electoral Code related to the media and to paid political advertising. The OSCE/ODIHR report on the local elections recommended that regulations on paid political advertisement in the media should be reconsidered, in order to allow unimpeded access to the media based on reasonable and objective criteria.*²⁷⁰

There were initiatives to regulate content on the Internet, on online news portals or online publications in 2013. The then ruling coalition passed a general Law on Media that would regulate the audiovisual, print and online media and would expand the powers of the NRA over all types of media. However, following concerns expressed by the civil society sector and international organisations, the Law was amended in 2014 and the online media were taken out of its scope. There is a Council of Media Ethics which also includes the online news media sector in its membership and maintains a Registry of the professional online media – Promedia.²⁷¹

The EU funded project launched in 2022 also aims to provide recommendations for legal, regulatory and self-regulatory mechanisms that will address the challenges posed by

²⁶⁵ Election Code (Unofficial Consolidated Text), available in Macedonian at:

https://drive.google.com/file/d/1Sa9L6emhxl2VaV_8d7oK3hJ6r1usnuY/view.

²⁶⁶ The Association of Journalists of Macedonia and Konrad Adenauer Stiftung (2018) *Comparative Analysis of Political Advertising in the Media*, p. 39. Available in Macedonian at: <http://star.znm.org.mk/wp-content/uploads/2019/01/Belegexemplar-2018-Comparative-Analysis-of-the-political-advertising-MK.pdf>.

²⁶⁷ State Commission for the Prevention of Corruption (2021) National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025, p. 6.

Available in Macedonian at: <https://dksk.mk/wp-content/uploads/2021/01/Nacionalna-strategija-DKSK-KONECNA.pdf>.

²⁶⁸ Truthmeter (2021) *Paid Advertising – The Danger of Media Corruption*: Civil society emphasised that via parliamentary, local and presidential elections, the media receive about EUR 3.5 million for each election cycle. For the local elections in October 2021, the total amount was just under EUR 5 million. Available at: <https://vistinomer.mk/platenoto-reklamiranje-opasnost-od-korupcija-na-mediumite/>.

²⁶⁹ Discussed by the Agency at a recent conference organised by the International Foundation for Electoral Systems (IFES), the Agency and USAID. Press release: “Electoral Integrity in the New Information Environment” held on 7 April 2022. Available at: <https://avmu.mk/en/2022/04/07/conference-held-on-electoral-integrity-in-the-new-information-environment/>.

²⁷⁰ European Commission (2022): COMMISSION STAFF WORKING DOCUMENT North Macedonia 2022 Report. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf>.

²⁷¹ Available at: <https://promedia.mk/index.php?lang=en>.



new and online media.²⁷² Broad consultations on these issues were launched with a range of key stakeholders in February 2023.

Defamation was decriminalised in 2012 with the adoption of the “Law on Civil Liability for Insult and Defamation”. According to data gathered by the Association of Journalists (AJM), defamation and insult are less used as an instrument of pressure on journalists and the media when comparing 2021 data with previous years – due to this decriminalisation. The AJM stresses that care should be taken with the implementation of the provisions of the Law on Civil Liability for Insult and Defamation not to restrict the right to freedom of expression on the Internet.²⁷³

The Code of Journalists is important because online media are not subject to media legislation and the prevailing position among the associations of journalists and experts is that the online media should be solely subject to self-regulation. The Council of Media Ethics and the Association of Journalists worked hard to strengthen self-regulation: a Register of Professional Online Media has been established with over 150 members and detailed guidelines were developed for ethical reporting of journalists in the online world.

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

The Agency for Audio and Audiovisual Media Services is the NRA for the audiovisual media sector in North Macedonia (the “Agency”). Its remit covers broadcasters (licensing, regulation and supervision) and the NRA also monitors public service media with regard to programming requirements stipulated in the LAAMS. The Agency is engaged with the development of proposals for implementation of the laws, and the preparation of strategies for the development of the broadcasting sector in North Macedonia.

Table 128. Independence of the National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government.	Yes – aligned with the 2018 AVMSD this is guaranteed (under Article 4 (2)) which states that the NRA is an independent, non-profit regulatory body which acts as a legal person with public competences. Institutional autonomy is guaranteed under Article 4 (2) with regard to property and assets. Article 5 (2) specifies that the	LAAMS (2013), as amended 2023, Article 4 (2) and (3) and Article 5 (2)

²⁷² European Union for Freedom of Expression: Alignment of National Media Legislation with the EU Acquis and Media Standards: https://pmcg-i.com/news_show/694/European-Union-for-Freedom-of-Expression:-Alignment-of-National-Media-Legislation-with-the-EU-Acquis-and-Media-Standards.

²⁷³ Association of Journalists of Macedonia (2021) *North Macedonia – Indicators on the Level of Media Freedom and Journalists’ Safety in 2020*, p. 13. Available at: <https://znm.org.mk/wp-content/uploads/2021/06/MK-ENG-2020.pdf>.



AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
	Agency is independent from any state body or other legal person in its operations.	
NRAs should exercise their powers impartially and transparently.	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 8 provides that the Agency is accountable for its operation to the National Assembly: via submission of a financial report and audit reports as well as the annual programmes and Financial Plans.</p> <p>Article 9 obliges the Agency to be transparent in its operations: via public meetings every three months; publication of opinions; adoption of a by-law which regulates in detail its transparency and public consultation procedure. Article 10 obliges the Agency to conduct public consultations on by-laws and on its Annual Operation Programme.</p>	As above: Articles 8, 9 and 10
Clear definition of the competencies and powers of the NRAs outlined in the law.	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 6 outlines clearly the competencies and powers of the NRA.</p>	As above: Article 6
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets.	<p>Yes – closely aligned with the 2018 AVMSD</p> <p>Article 4 (7) of the Law outlines the sources of funding of the NRA – involving funds from the budget, revenues from the licence fees as well as from loans and other financial and technical assistance.</p> <p>The 2023 amendments to the LAAMS introduced changes to Article 105 and the funding mechanism. In particular it removed the discretionary powers of the Government to reduce the percentage allocated to institutions under Article 105.</p>	As above: Article 4 (7) Article 105
Clear conditions and (transparent and non-discriminatory) procedures for the appointment and dismissal of the heads of NRAs/members of governing bodies are laid out in the law.	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 14 (1): members of the Council (decision making body of the Agency) are appointed by the Assembly of the Republic of North Macedonia on the basis of a previously conducted public competition and an organised public debate on the nominated candidates.</p> <p>Article 16 (1) focuses on the necessary qualifications of candidates. Article 16 also determines clear rules for the conflict of interests for election of Council.</p> <p>Article 14 (3) details the involvement of relevant civil society organisations in the nomination of candidates.</p> <p>Article 14 (5) stipulates that the Commission for Elections and Appointments of the Assembly is obliged to organise a public hearing within one month after the end of the public competition for the candidates to which it will invite the organisations that supported the candidates. Article 14 (9) stipulates that the Assembly appoints the members of the</p>	As above : Article 14 (1) Article 16 (1) Article 14 (3) Article 14 (5) Article 14 (9)



AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
	Council by a two-thirds majority of the votes from the total number of Assembly members.	
Existence of effective and independent appeal mechanisms.	Yes – aligned with the 2018 AVMSD Article 24 provides that the decisions adopted by the Agency may be subject to administrative dispute before a competent court. The administrative dispute complaint shall be submitted within a 30-day period from receipt of the decision.	As above: Article 24
Provisions in the law that support cooperation between NRAs.	Yes – aligned with the 2018 AVMSD Article 25 obliges the Agency to cooperate with different national and international bodies, including other NRAs. Paragraph 4 provides that: <i>“in accordance with its competencies and in line with the implementation of the provisions in this Law, the Agency shall cooperate with regulatory bodies from other countries and international institutions and bodies.”</i>	As above: Article 25

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

The legislative framework is aligned with the requirements of the 2018 AVMS Directive, following the adoption of amendments in July 2023. In 2018 changes were introduced in the law regarding the procedure of nomination and election of the members of the Council of the Agency.²⁷⁴ Since the adoption of the first Broadcasting Law in 1997, there have been three subsequent cycles of legislative change in North Macedonia in terms of the status and appointment of the national regulatory authority: 2005, 2013 and 2018. In all cases, the provisions of the law regarding the independence of the regulatory body were constantly improved in order to avoid political influence on the election and independent work of the members of this body. Although changes were adopted at the end of 2018, by September 2023 the election of the new Council has not yet been completed due to disagreements between the major political parties. The members of the NRA need to be elected by a two-thirds majority – the consent of both major parties is required – so it is assumed that the process is blocked because political parties are unable to agree on the election of individuals who are independent experts.²⁷⁵ As these new provisions have not yet been tested, there were no proposals to introduce further amendments in the Draft Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023).

²⁷⁴ At the request of the civil society, and reflecting experiences from the election of other regulatory bodies, Council members are now appointed by the Assembly of the Republic of North Macedonia on the basis of a public competition and an organized public debate on the nominated candidates.

²⁷⁵ Kolovska, V. (2021) *Media reforms are by no means on the politicians' agenda*, Truthmeter, 16 December 2021. Available at: <https://vistinomer.mk/mediumskite-reformi-nikako-da-stasaat-na-dneven-red-kaj-politicharite/>.



As noted above, additional provisions were added to the LAAMS in 2018 allowing the Government the discretion to reduce the fixed percentage to be allocated to the PSB (and also the regulator and the public transmission service).

The EU funded project entitled “Technical Assistance to Public Service Media in the Western Balkans” addressed the introduction of a new funding model for PSB (and by extension the NRA).

The law stipulated that the level of financing for PSM and the regulatory agency, AVMU, should increase from 0.8 % of the state budget (totalling €4 billion in 2018) to 0.9% in 2019 and to 1% in 2020 – and then remain stable. According to the report, the funding level for MRT over the past few years has barely reached 0.74 % of the budget. In 2020, MRT should have received a subsidy amounting to €16.5 million (by budget provision rather than what is stipulated in the law) but, in reality, it received only €11 million. The prospects for 2021 are similar. MRT and the AVMU are entitled to about €40 million (1 %) but will receive just 0.39%.²⁷⁶

This represents a significant obstacle to achieving effective independence of the NRA in that since 2018, the government has allocated less funding to the regulator than that envisaged in the Law.²⁷⁷ In its 2022 Report, the European Commission stated that:

The government continued to cut funding for the regulator, the public broadcaster and the public enterprise for broadcasting, using the provisions of the Law on audio and audiovisual media services.²⁷⁸

The proposal of the Expert Team working with the Ministry had recommended that the percentage of the national budget be fixed (amending Article 105), and that the discretionary powers of the Government (transitional provisions introduced in 2018) to reduce this percentage be removed.²⁷⁹

²⁷⁶ See for example: Funding of Public Service Media in the Western Balkans - Second Assessment Report On The Implementation Of Common Funding Principles. North Macedonia. 28 February 2021. Report under the Empowering Society- Technical Assistance to Public Service Media in the Western Balkans.

²⁷⁷ Trpevska, S. and Micevski, I. (2021) Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the Year 2020, Country report: The Republic of North Macedonia_(Florence: RSC/Centre for Media Pluralism and Media Freedom, July 2021). Available at: https://cadmus.eui.eu/bitstream/handle/1814/71968/the_republic_of_north_macedonia_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y.

²⁷⁸ European Commission (2022): COMMISSION STAFF WORKING DOCUMENT North Macedonia 2022 Report. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf>

See also: “Gap Analysis of the national legislative framework and proposed changes to the Law on Audio and Audiovisual Media Services (LAAMS) for compliance with the Audiovisual Media Services Directive (EU) 2018/1808 and relevant European standards”. December 2022. Elaborated under the project EU for Freedom of Expression in North Macedonia: Alignment of national media legislation with EU acquis and media standards. Prepared by Deirdre Kevin, Snezana Trpevska and Katrin Nyman-Metcalf.

²⁷⁹ On the project EU for Freedom of Expression in North Macedonia: Alignment of national media legislation with EU acquis and media standards.



The Draft Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) removed the provisions (from 2018) allowing the Government the discretion to reduce annually the percentage of the allocation to each of the three institutions.²⁸⁰ In the final Inter-Ministerial negotiations in Government, the 1% of the Budget revenues (of the previous fiscal year) to be divided between the three organisations was changed to 1% of tax revenues of the budget (of the previous fiscal year).

This implies less money than a 1% of the entire budget revenues. However, calculations show that all three institutions will receive slightly more funding than in the last five years under the new mechanism. It was understood by the Expert team that the need to adjust from a 1% of the Budget revenues allocation to 1% of tax revenues reflects the financial challenges of the Government in meeting all the budgetary needs of the state.

Regarding the new provisions and the new mechanism for funding the three institutions, the experts noted the following positive outcomes:

- All three institutions will receive more funding in the coming years than in the past 5 years;
- This is due to the positive action to remove from the law the discretionary provisions of the Government to reduce the funding every year for the core activities of the three institutions;
- The new provisions introduce an additional mechanism to provide for supplementary funding for each institution (105 ph8).²⁸¹

As the three institutions are highly likely to seek additional funds in order to fulfil their remits, the Expert Team has also included some recommendations that would provide more clarity on how the system for allocation of additional funds would work. These issues will be further discussed in the ongoing process of reform of the media legislative framework. The amendments to the LAAMS adopted in July 2023 reflect the Inter-Ministerial negotiations in Government. Hence the system of funding for these institutions has been improved and made more stable and predictable. The final recommendations of the Expert team on the EU project are still open for discussion.

However, with regard to the independence of the NRA, the additional amendments introduced to Parliament in November 2023 which are outside of the legislative reform process in the EU project, threaten the independence of the NRA.

As noted above, the amendments introduce an automatic extension of licences for nine years with minimal criteria included for the right to extension. The new amendments delete the paragraphs whereby a decision to extend must be made by the Agency. It removes the competence of the Agency in extending licenses with reference to pluralism and interferes with the Agency's responsibility in protecting and developing pluralism in

²⁸⁰ According to discussions between the EUD and the Directors of the three institutions, they were relatively satisfied with the solution. The relevant Ministries had organised meetings with them to discuss the new mechanism (information based on Communication from the EUD to DG Near and the Project Team.

²⁸¹ Briefing Note on Funding of Public Service Broadcasting from Expert Team: EU Freedom Of Expression in North Macedonia April 7th 2023 (Updated May 12th). Prepared by Deirdre Kevin, Snezana Trpevska and Dragan Sekulovski in the context of the project - under the project EU for Freedom of Expression in North Macedonia.



the audio and audiovisual media services, encouraging and supporting the existence of diverse and independent audio and audiovisual media services (Article 6). It contradicts the competences of the Council of the Agency (Article 18 (1)) to adopt decisions for awarding, revoking or extending licenses for television or radio broadcasting. Hence, the regulator will be obliged to renew the licenses without taking into consideration the fulfilment of the content requirements stipulated in the licence and the contribution to pluralism and diversity of the broadcasters. The only grounds for not renewing the license are a few problematic criteria: for example, if the broadcaster has violated the special prohibitions from Article 48 of the Law (related to incitement to hatred, terrorism, discrimination etc.) “at least three times during the duration of the license, for which there are final court rulings”, or if the broadcasters “did not cover elections (at least one election cycle) in a fair, balanced and impartial manner, for which there are final court rulings.”

Hence, a broadcaster can twice violate any of the terms regarding prohibited content (under Article 48):

endanger national security, incite violent overthrow of the constitutional order of the Republic of North Macedonia, call for military aggression or an armed conflict, or content, the dissemination of which, constitutes an illegal activity, including public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia..... and “incite hatred or violence or spread discrimination, intolerance.

4.8.2.3. 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 are examined in relation to obligations on audiovisual media services to protect minors from harmful content; with regard to protecting minors from harm in the context of audiovisual commercial communications; regarding prohibited/restricted advertising.

Table 129. Protection of minors

AVMSD and the protection of minors	In line with AVMSD	References
Obligations to protect minors from harmful content, via watershed/scheduling, age verification tools or other technical measures	Yes – aligned with the 2018 AVMSD Harmful content (Article 50 Para 1) including reference to watershed/ scheduling, age verification tools or other technical measures.	Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Article 50 (1)
Prohibition of commercial use of personal data of minors collected when implementing these measures	Yes – aligned with the 2018 AVMSD	As above, new Article 50a.
Informing viewers about potentially harmful content	Yes – aligned with the 2018 AVMSD	As above,



AVMSD and the protection of minors	In line with AVMSD	References
(content rating systems, visual or acoustic signals)	<p>***</p> <p>The Law emphasises the need for the strictest measures to protect minors from the most harmful content (Article 50 (1))</p> <p>Article 50 (3) deals with informing viewers, acoustic and visual warnings.</p> <p>Article 50 (4) deals with the need for distributors (cable, IPTV etc), to encrypt pornographic content.</p> <p>***</p> <p>Watersheds, means of categorisation, forms of acoustic and visual warning, visual signs, and technical measures for the protection of minors are stipulated in the Rulebook on the Protection of Minors. Rules apply to both linear and on-demand AVMS.</p>	<p>Article 50 (1,2,3 and 4)</p> <p>***</p> <p>Rulebook on the Protection of Minors (21 November 2014)</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>Yes –aligned with the 2018 AVMSD</p> <p>The ACCs for cigarettes and other tobacco products including e-cigarettes, as well as alcohol and alcoholic beverages, except for wine and beer, are prohibited (Article 53 (7)).</p> <p>Article 53 (8): ACCs for wine and beer must not specifically target minors and must not show minors consuming these products.</p> <p>There are several other rules regarding how ACCs for wine and beer are presented (Article 53 (8)).</p> <p>There is also a prohibition on ACCs for several other items such as drugs (Article 53 (7)), weapons and pyrotechnics (Article 53 (11)).</p> <p>Article 53 (20) amended, whereby audiovisual media service providers and video-sharing platform providers can establish a code of conduct to reduce exposure of minors to ACCS for alcohol. Where this does not achieve the aim, the NRA will establish a regulation in the area.</p>	<p>As above,</p> <p>Article 53 (7)</p> <p>Article 53 (8)</p> <p>Article 53 (11)</p> <p>Amended Article 53 (20)</p>
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	<p>Yes –aligned with the 2018 AVMSD</p> <p>Article 53 (13): ACCs shall not cause physical or moral harm to minors. Article 53 (14) covers the issues of undue pressure; exploiting lack of experience; pester power; taking advantage of the special trust that minors have in parents, teachers, etc.; and depicting minors in dangerous situations.</p>	<p>As above,</p> <p>Article 53 (13), Article 53 (14)</p>



AVMSD and the protection of minors	In line with AVMSD	References
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	<p>Yes - aligned with the 2018 AVMSD</p> <p>Under Article 53 (15), where such ACCs accompany children's programmes, they should not contain inaccurate or misleading information about the nutritious value of the product, etc. AVMS providers can agree on a Code of Conduct for ACCs for such products (Article 53 (20)) but this has not yet happened.</p> <p>A new Article 53 (21) stipulates that the audiovisual media service providers and video-sharing platform providers can establish a code of conduct to reduce exposure of minors to HFSS Foods. Where this does not achieve the aim, the NRA will establish a regulation in the area.</p>	<p>As above,</p> <p>Article 53 (15), Article 53 (20)</p> <p>New Article 53 (21).</p>
Prohibiting of product placement in children's programmes	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 55 Paragraphs (1) and (3) forbids product placement in children's programmes.</p> <p>***</p> <p>This is reaffirmed in point 30 of the Guidelines on Implementing Product Placement Rules.</p>	<p>As above,</p> <p>Article 55 (1) and (3)</p> <p>***</p> <p>Guidelines on Implementing Product Placement Rules (30 December 2014)</p>

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

As can be seen from the above, the national legislation is now aligned with the 2018 AVMS Directive. The need to effectively reduce exposure to ACCs for High Fat, Sugar and Salt (HFSS) foods was strengthened in the Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023). Where the audiovisual media services do not develop a code to address this issue, the Agency will develop a regulation. Similar requirements were introduced to effectively reduce exposure to ACCs for alcohol. The LAAMS also includes the prohibition of the use of the data of minors for commercial purposes.

The Agency for Audio and Audiovisual Media Services implements the obligations regarding the protection of minors on the basis of the Rulebook on the Protection of Minors, a by-law adopted by the Agency's Council in 2014. The Agency also has, since 2019, a Media Literacy Policy²⁸² the overall objective of which is to promote media literacy in the society having citizens in mind and more specifically: to empower people of different classes, ages and segments of society, including children and young women, in their different capacities and contexts to benefit from the media environment they live in.

The Media Literacy Network in North Macedonia, which (in April 2022) consisted of 70 members (state institutions, citizens organisations, media, educational institutions,

²⁸² Available at: https://avmu.mk/wp-content/uploads/2017/06/Media-Literacy-policy_online-version.pdf.



companies and private persons/experts) has conducted many activities dealing with the issue of the protection of minors. During the Media Literacy Days 2021 (MLD 2021) media literacy workshops were held in secondary schools, organised by the Macedonian Institute for Media. The aim was to empower teenagers by sharing with them knowledge and skills to critically assess media content in both traditional and online media and social networks.²⁸³ The self-regulatory Council of Media Ethics of Macedonia (CMEM) presented the “Recommendations for Professional Reporting for Children and Youth” prepared in partnership with the First Children’s Embassy in the World “Megjashi”, and via consultations with the professional media and journalism associations. During the summer of 2021, as part of a wider campaign to raise awareness of the importance of media literacy, the Research Institute on Social Development (RESIS) prepared a Short Manual on Media Literacy providing parents with knowledge on how to help their children be protected online.

With the introduction of limited criteria under the amendments in Parliament in November 2023 to the LAAMS, repeated violations in the area of protection of minors will not be a criteria for refusing the extension of licences.

4.8.2.4. 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 services are made “continuously and progressively more accessible”. The table below outlines the framework in North Macedonia.

Table 130. Accessibility

AVMSD and accessibility of audiovisual media services	In line with AVMSD	References
Ensuring – without undue delay – that services provided by audiovisual media service providers are made continuously and progressively more accessible.	Yes – aligned with the 2018 AVMSD Under Article 26 (9), the Agency will develop a by-law in this area. Article 110 (1) also obliges the PSB to provide programmes, informative shows and news intended for people with disabilities.	Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Article 26 (1) and (9) Article 110 (1)
AVMS providers should report on this to the NRAs. AVMS providers are encouraged to develop action plans in this area and should communicate these to the NRAs.	Yes – aligned with the 2018 AVMSD	As above, Article 26 (2 and 3).

²⁸³ More information on the workshops are available on: <https://mediumskapismenost.mk/dmp-2021-na-cas-po-mp-verifikacija-na-informaciji/?lang=en>.



States should provide a public online point of contact for providing information and receiving complaints.	Yes – aligned with the 2018 AVMSD Based on the obligation under Article 26 the NRA had already developed a specific section on its website focused on access to the media for people with sensory impairment. ²⁸⁴ The NRA has also dedicated part of its website to citizens' complaints about programmes. ²⁸⁵ The latest amendments confirmed that the contact point will be established by the Agency	As above, Article 26 (4) **
Emergency information should be in accessible formats.	Yes – aligned with the 2018 AVMSD	As above, Article 26 (5)

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

The legal framework is now aligned with the stronger obligations of the 2018 AVMS Directive, following the adoption of the Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) in July 2023, which introduced the necessary provisions to align with the Directive.

The NRA has done considerable work in this area, including raising awareness among broadcasters about the importance of this issue, through workshops, public debates, manuals and other documents. They have been working towards the adoption of a self-regulatory act by audiovisual media service providers. The process has been slow as most broadcasters face financial challenges due to limited advertising revenues and the small and fragmented market.²⁸⁶ Measures to support people who are hard of hearing have so far been implemented by the public broadcaster but only by some of the private television stations at the national level and one at the regional level. However, these measures are not implemented by most of the other private TV stations and not on a regular basis. For visually impaired people there is still no audio description available on broadcast programmes.

In June 2015, the Agency adopted a three-year Programme for Ensuring Media Accessibility for Persons with Sensory Impairments. In 2016 the Agency conducted a study entitled “Access to Broadcast Programmes for Persons with Vision and Hearing Loss – Offer and Needs”. Since 2015, several meetings have been held with the broadcasters in order to inform them about the needs of sensory impaired persons and the means by which

²⁸⁴ Available at: <https://avmu.mk/en/access-to-the-media/>.

²⁸⁵ Available at: <https://avmu.mk/en/citizens/>.

²⁸⁶ Trpevska, S. and Micevski, I. (2021) *Monitoring Media Pluralism in the Digital Era, Country report: The Republic of North Macedonia*, p. 17. Centre for Media Pluralism and Media Freedom, European University Institute 2021. Available at: https://cadmus.eui.eu/bitstream/handle/1814/71968/the_republic_of_north_macedonia_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y.



programmes can be made accessible for them. In 2020²⁸⁷ a workshop was held for broadcasters and providers of on-demand audiovisual media services, outlining best practices in order to develop a self-regulatory document that would provide better access to the media for persons with sensory disabilities. The NRA returned to this topic again during its Media and Elections Conference in 2021.²⁸⁸ The Agency has prepared a booklet entitled “How to Provide Information for Persons with Sensory Impairments – Approach, Services, Programmes, Materials and Alternative Formats”.²⁸⁹ There is an obligation in the Electoral Code for national TV stations to provide election coverage in accessible formats for the hard of hearing. However, it is not being implemented by all national TV stations.

The Agency has initiated negotiations with broadcasters towards adopting a self-regulatory act, in accordance with the 2018 AVMS Directive. These actions can now be strengthened with the adoption of the stronger obligations in the Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) in July 2023.

4.8.2.5. 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 freedom of expression, a cornerstone of democratic systems”. The AVMSD requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The table below outlines to what extent the legislative framework addresses these requirements.

Table 131. 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.	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The rules on transparency are stipulated in the Law on Media under Article 14. Broadcasters are obliged to publish such data at the beginning or at the end of the audiovisual programmes.</p> <p>Broadcasters are also obliged to publish data on: the ownership structure, the editor-in-chief/ editors; and sources of financing for the broadcaster in the previous year on their own</p>	<p>Law on Media (26 December 2013; 23 January 2014): Articles 14 and 15</p> <p>***</p> <p>Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Article 51 (1)</p>

²⁸⁷ In the context of the JUFREX project: <https://avmu.mk/en/2020/01/30/workshop-held-on-providing-access-to-media-for-persons-with-disabilities/>.

²⁸⁸ More information about the Conference are available at: <https://www.coe.int/en/web/skopje/-/-media-and-elections-online-conference-with-the-media-regulatory-body-of-north-macedonia>.

²⁸⁹ Explains how media outlets can ensure easier communication, depending on the type of disability – hearing, vision, physical or mental disability – via subtitled videos, open or closed textual descriptions, sign language or audio descriptions.



	<p>programme, at least three times a year, during prime-time (Article 15).</p> <p>***</p> <p>A similar obligation is stipulated in the LAAMS (Article 51 (1)).</p> <p>More detail is provided in the “Guidelines for Fulfilling the Obligations for Impressum and Information Available to the Users” (09.10.2018).</p>	<p>***</p> <p>Rulebook on the Manner of Publishing Data about the Broadcasters’ Work (27 February 2015)</p> <p>***</p> <p>Guidelines for Fulfilling the Obligations for Impressum and Information Available to Users (09 October 2018)</p>
Possible to also require AVMS providers to make accessible information on their ownership structures.	<p>Yes – closely aligned with the 2018 AVMSD</p> <p>Broadcasters are obliged to submit a range of data to the NRA once a year, as stipulated in the Law on Media (Article 15 (1)), which include data on: name and head office address of the legal entity or the name and place of residence of the physical entity who owns shares in the media provider, including the percentage of acquired shares and the date of acquisition thereof; the editor-in-chief/editors; sources of financing in the previous year; total revenues and expenditures of the previous year.</p>	<p>Law on Media (26.12.2013; 23.01.2014):</p> <p>Article 15</p>
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers.	<p>Yes – this is aligned with the 2018 AVMSD.</p> <p>According to the LAAMS, the NRA has an obligation to establish and maintain registries of all the broadcasters (Article 66) and of the on-demand AVMS (Article 57).</p>	<p>LAAMS (2013), as amended July 2023</p> <p>Articles 57 and 66</p>

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

From the table above, it is apparent that there are extensive rules regarding the transparency of media ownership. A study conducted for the NRA in 2020 concluded that there are no obstacles to the implementation of the provisions related to the transparency of media ownership in the audiovisual media sector as the Agency regularly monitors the implementation of these provisions and in recent years almost all broadcasters have regularly submitted and published data on ownership, operations and financing.²⁹⁰ The NRA also publishes and regularly updates on its website the data on the ownership structure, headquarters, governing bodies and a number of other information about broadcasters. The report concluded that the main policy and regulatory measures related to media transparency should continue to be enforced and supported, as they are in line with the standards of the European Union and the Council of Europe.²⁹¹ However, the authors of the

²⁹⁰ Furnémont, J.F. and Trpevska, S. (2020) *Pluralism of Media Ownership in the New Media Environment: A Study for the Agency for Audio and Audiovisual Media Services*, p. 37. Council of Europe. Available at: <https://rm.coe.int/hf37-study-media-ownership-eng/16809f0272>.

²⁹¹ Ibid, p. 43.



study also emphasised that the current concentration rules in the LAAMS were designed almost 15 years ago and no longer strike a balance between the objective of safeguarding pluralism and diversity and the objective of having a thriving audiovisual marketplace. Therefore, they strongly advised that they should be reviewed in order to make them fit for a “new” media environment.²⁹²

The project launched in 2022 with the support of the European Commission had an additional component that aimed to update the legal and policy framework to encourage the economic development and sustainability of the media sector, and also policies to support media pluralism and diversity.²⁹³ Hence the provisions on media ownership and pluralism were to undergo a further review in 2023, which had not yet taken place at the time of completion of this report.

In the general (regulatory) objectives of the LAAMS (Article 2), the notion of pluralism is not mentioned. In a previous study on the issue of structural pluralism in the audiovisual sector, it was argued that the regulatory objectives in the Law are more closely related to the general term “development”, followed by the terms “technical and technological development” and “stimulating and promoting competition” in the audio and audiovisual media services.

Regarding the protection of media pluralism, these provisions tend to focus mainly on creating conditions for economic and technical and technological development of the activity, and not on the existence of a multitude of different audio and audiovisual media services.²⁹⁴ The NRA, however, has a role to promote and protect pluralism and to encourage and support the existence of various independent and autonomous audio and audiovisual media services (Article 6 (1) of the LAAMS). The NRA monitors the legal provisions on the concentration of media ownership, and publishes special reports (including market analyses)²⁹⁵ with detailed information on the ownership structure of broadcast media, and the procedures initiated in response to unlawful media concentration.²⁹⁶ The NRA also addresses this issue in its strategic planning for the development of audiovisual broadcasting activity.²⁹⁷

²⁹² Ibid, pp. 41 and 42.

²⁹³ European Union for Freedom of Expression: Alignment of National Media Legislation with the EU Acquis and Media Standards: https://pmcg-i.com/news_show/694/European-Union-for-Freedom-of-Expression:-Alignment-of-National-Media-Legislation-with-the-EU-Acquis-and-Media-Standards.

²⁹⁴ Trpevska, S. (2018) *The Role of Structural Pluralism in the Macedonian, Croatian and Montenegrin TV Sector*, p. 3. *Macedonian Institute for Media*. Available at: https://mim.org.mk/attachments/article/1126/The%20role%20of%20structural%20pluralism_FIN.pdf.

²⁹⁵ Available at: <https://avmu.mk/en/economic-analyses/>.

²⁹⁶ Agency for Audio and Audiovisual media Services (2021), *An Analysis of Media Ownership in 2021*. Available at: <https://avmu.mk/wp-content/uploads/2021/08/An-Analysis-of-Media-Ownership-in-2021-v.4-korica-1.pdf>

²⁹⁷ So far, the Agency has adopted three strategic documents (2007-2012; 2018-2022; 2019-2023) based on a range of analyses of the economic operations of the broadcasters, on audience preferences, on the content analyses of the programme diversity and quality and other aspects of audiovisual activity. They are available in Macedonian at: <https://avmu.mk/en/strategy-for-development-of-the-broadcasting-activity-in-the-republic-of-macedonia/>.



4.8.3. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works, achieved by placing quota requirements on broadcasters (Article 16) and requirements on broadcasters that support the independent production sector (Article 17). Relevant definitions were examined above (section 4.8.1.2). The tables below outline the extent to which the national framework aligns with the obligations as outlined in the 2018 AVMS Directive.

Table 132. 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.	<p>Yes – aligned with the 2018 AVMSD</p> <p>Broadcasters with national coverage should ensure that at least 51% of their broadcast programmes throughout the year is comprised of European audiovisual works. The usual types of content are excluded. The percentage for the PSB is higher, at 60% (Article 91 (5)).</p> <p>***</p> <p>The rules on how to meet the obligation are outlined in a specific rulebook.</p>	<p>Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023</p> <p>Article 91 (1)</p> <p>Article 91 (5)</p> <p>***</p> <p>Rulebook on Broadcasting European Audiovisual Works and Works by Independent Producers (04 December 2014)</p>
Exceptions to this rule.	<p>Yes – aligned with the 2018 AVMSD</p> <p>The obligation, as it is stipulated now, refers only to TV services with a licence for national coverage, and the PSB.</p>	As above, Article 91 (2)
Rules where a minimum percentage of content (for example 10%) should be European works created by producers who are independent of broadcasters.	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 91 (2) and (8) stipulate that national TV broadcasters, including the PSB, are obliged to allocate at least 10% of their programme budgets for European audiovisual works from independent producers, where at least half of these programmes should have been produced in the last five years.</p>	<p>LAAMS (2013)</p> <p>Article 91 (2)</p> <p>Article 91 (8)</p>

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

As can be seen above, the current framework is aligned with the AVMS Directive as regards linear audiovisual media services. The 2018 AVMS Directive also increased the obligations



of non-linear on-demand audiovisual services regarding the promotion of European works (Article 13).

Table 133. Promotion of European works on on-demand audiovisual services

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Requirement that AVMS providers of on-demand AVMS secure at least a 30% share of European works in their catalogues and ensure prominence of those works.	Yes – aligned with the 2018 AVMSD Article 60 (1) introduces the 30% quota and the prominence rule.	Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Article 60 (1)
Exemptions for AVMS providers with a low turnover or a low audience?	Yes – aligned with the 2018 AVMSD The obligation shall not apply to AVMS providers with a low turnover or a low audience, or to providers where those measures would be impracticable or unjustified by reason of the nature or theme of the AVMS content offered.	As above, Article 60 (2)
Reference to European Commission guidelines on a) the calculation of the share of European works, and b) definitions of low audience and low turnover of services?	Yes – aligned with the 2018 AVMSD Details regarding the implementation of the measures will be laid down in a by-law by the Agency with reference to Guidelines issued by the European Commission	As above, Article 60 (3)
Financial contribution obligations for services targeting the country?	There is no such provision in the Law.	

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

The Draft Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) introduces amendments to Article 60 in order to align with the Directive regarding obligations for video-on-demand services.

The NRA prepared a “Rulebook on Broadcasting European Audiovisual Works and Works by Independent Producers” and has also prepared a unified template for the annual



report on the fulfilment of the obligation for European works.²⁹⁸ The NRA promotes the implementation via regular workshops.

4.8.4. 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 the rules regarding prohibited ACC in relation to certain goods and services.

Table 134. 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 ACCs must be immediately recognisable; surreptitious ACC is prohibited; as is the use of subliminal techniques in ACCs.	Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023 Article 53 (1-3)
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 Article 53 (4).	As above: Article 53 (4)
ACC for the prescription of medicinal products and medical treatment shall be prohibited.	Yes – aligned with the 2018 AVMSD, regarding ACCs for prescription medical products and medical treatments (Article 53 (9)). Rules for the presentation of over-the-counter medical products/treatments in ACCs are also listed (Article 53 (10)).	As above: Article 53 (9) Article 53 (10)
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor.	Yes – aligned with the 2018 AVMSD The definition of sponsorship now refers to video-sharing platform services and user-generated content (Article 3 (20)). Article 54 (6) of the LAAMS has been adjusted to include reference to e-cigarettes or refills. Companies whose activities include the manufacture or sale of prescription	As above: Article 3 (20) Article 54 (5) Article 54 (9) Article 54 (6) Article 54 (8)

²⁹⁸ Available in Macedonian at: https://avmu.mk/wp-content/uploads/2017/05/Obrazec_za_Evropski_dela.doc.



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
	<p>medicinal products and/or medical treatments may appear as sponsors but only their name or image may be promoted – not the specific medicinal products/treatments (Article 54 (8)).</p> <p>There is no prohibition of sponsorship of documentaries or children’s programmes, but the sponsor cannot be identified (Article 54 (9)).</p> <p>***</p> <p>The rules regarding sponsorship are detailed in the Rulebook on Sponsorship of the Agency for Audio and Audiovisual Media Services.</p>	<p>***</p> <p>Rulebook on Sponsorship (12 March 2015)</p>
<p>No product placement (PP) in news, current affairs, consumer affairs, religious programmes or children’s programmes.</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 55 (1) has been revised to reflect the changes in the Directive as Product Placement is now permitted (except in the range of programmes listed in the AVMS).</p> <p>Reference to e-cigarettes or refills are now included in Article 55 (4). Product placement of medical products and treatments available only on prescription is prohibited under Article 55 (5).</p> <p>The definition of Product Placement now refers to user-generated content (Article 3 (15)).</p> <p>***</p> <p>The “Guidelines” specify that product and prop placement is prohibited in a broad range of programmes.</p>	<p>Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023</p> <p>Article 3(15)</p> <p>Article 55 (1)</p> <p>Article 55 (4),</p> <p>Article 55 (5)</p> <p>***</p> <p>Guidelines on Implementing Product Placement Rules (30 December 2014)</p>
<p>PP should not affect the responsibility or editorial independence of the AVMS provider; it should not directly encourage the purchase or rental of the product; nor should it give undue prominence to the product.</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>***</p> <p>Detailed rules are provided in the Guidelines on Implementing Product Placement Rules.</p>	<p>Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023</p> <p>Article 55 (2), (4), (6) and (7)</p> <p>***</p> <p>Guidelines on Implementing Product Placement Rules (2014)</p>
<p>Viewers shall be clearly informed of the existence of PP in a programme.</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>Further details outlined in the Guidelines on Implementing Product Placement Rules.</p>	<p>As above:</p> <p>Article 55 (2)</p>



AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
Limiting the proportion of television advertising spots / teleshopping spots throughout the day, or during particular time periods?	<p>Yes – aligned with the 2018 AVMSD</p> <p>The recent amendments adjusted Article 100 (1) to reflect the new rules on duration of advertising and teleshopping spots in the 2018 AVMSD.</p> <p>A new Article 100a outlines the provisions applicable to teleshopping and self-promotion TV channels.</p>	<p>As above:</p> <p>Article 100 (1), Article 100a</p>
Are there exceptions to these rules (on limits of volume), for example for self-promotion, sponsorship or PP?	<p>Yes – aligned with the 2018 AVMSD</p> <p>The advertising limit does not apply to self-promotion, sponsorship or PP; nor to announcements of public interest or charity fundraising. The law includes also “neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots”</p>	<p>As above:</p> <p>Article 100 (3)</p>

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

The legal framework in North Macedonia as regards ACCs is aligned with the 2018 AVMS Directive following the adoption of the Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) in July 2023.

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

An important novelty of the 2018 AVMS Directive was expanding the scope to include VSPs. The Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) adopted by Parliament in July 2023 introduced the necessary provisions on VSPs. Relevant definitions in this area were addressed in section 4.8.1.2 above. The amendments introduced a new Chapter VIIIa on Provisions relevant to video-sharing platform services. A new Article 144-a covers the establishment of the jurisdiction of VSPs, which was addressed under section 4.8.1.3. above. A new Article 144-b details obligations regarding the Registry of VSPs, and Article 144-c addresses obligations regarding protection of minors and the public from illegal and harmful content, while Article 144-d outlines measures to be taken to achieve this protection. Article 144-e focuses on measures to be taken regarding commercial communications.



Table 135. Obligations on video-sharing platforms regarding content

The AVMSD and provisions on VSPs 28b	In line with the AVMSD	References
Protecting minors from harmful content in programmes, user-generated videos and ACCs; protecting the general public from programmes, user-generated videos and ACCs containing incitement to violence or hatred as well as from criminal content – provocation to commit a terrorist offence; child pornography; racism and xenophobia.	Yes – aligned with the 2018 AVMSD Article 144-c outlines the obligations of VSPs regarding content. It references the rules on protection of minors (under Articles 50 and 53 of the law). It also references the rules regarding prohibited content (under Article 48 of the Law).	Law on Audio and Audiovisual Media Services (LAAMS) (26 December 2013) as amended July 2023, Article 144-c
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others.	Yes – aligned with the 2018 AVMSD Article 144-c provides the general obligation while Article 144-e (1) specifies the need for compliance of both ACCs controlled by the VSPs and those controlled and uploaded by others.	As above, Article 144-c Article 144-e (1)
VSPs should clearly inform users where programmes and user-generated videos contain ACC.	Yes – aligned with the 2018 AVMSD	As above, Article 144-e (5)
VSP 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 VSPs are required develop codes of conduct, related to HFFS foods, and to alcohol.	As above, Article 144-e (6)

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

As is apparent above, the new amendments adopted in July 2023 aligned the national legislation with the AVMS Directive. 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 properly implemented. In addition, the AVMS Directive outlines the role of the NRA in assessing the measures put in place.

Table 136. Obligations on video-sharing platforms – measures and supervision (VSPs)

The AVMSD and provisions on VSPs (Article 28b)	In line with the 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 Article 144-d outlines the measures to be taken by video-sharing platforms.	Law on Audio and Audiovisual Media Services



	<p>Article 144-d (1) makes reference to the rules on protection of minors (Articles 50 and 53) and Article 144-c (2) references the rules on illegal content (Article 48).</p> <p>Article 144-e (3) requires that the terms of use explain the requirement for compliance with rules on ACCs</p>	<p>(LAAMS) (26 December 2013) as amended July 2023,</p> <p>Article 144-d (1) and (2)</p> <p>Article 144-e (3)</p>
Possibility to declare the presence of ACCs in user-generated video	Yes – aligned with the 2018 AVMSD	As above, Article 144-e (4)
Reporting or flagging systems to report harmful content to the VSP provider	Yes – aligned with the 2018 AVMSD	Article 144-d (5)
Age verification systems for users	Yes – aligned with the 2018 AVMSD	Article 144-d (5)
Content rating systems for users	Yes – aligned with the 2018 AVMSD	Article 144-d (5)
Parental control systems	Yes – aligned with the 2018 AVMSD	Article 144-d (5)
Procedures for complaints to the VSP	Yes – aligned with the 2018 AVMSD	Article 144-d (5)
Providing media literacy measures and tools and raising users' awareness of those measures and tools	Yes – aligned with the 2018 AVMSD	Article 144-d (5)
Implementation and supervision		
Protection of the personal data of minors	Yes – aligned with the 2018 AVMSD	Article 144-d (6)
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 144-f outlines the mode of implementation of measures for video-sharing platforms.</p> <p>The measures shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided. Article 144-f (1)</p> <p>The Agency shall assess the measures taken by video-sharing platform providers. The Agency shall ensure that all video-sharing platform providers apply the measures set out in this Law or bylaws adopted under this Law. Article 144-f (2)</p>	<p>As above,</p> <p>Article 144-f (1 and 2)</p>
Are there out-of-court redress mechanisms available for the settlement of disputes between	Yes – aligned with the 2018 AVMSD	As above, 144-f (4)



users and VSPs, and can users assert their rights before a court in relation to VSPs?		
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Where appropriate, video-sharing platform providers are encouraged to engage in co-regulatory approaches, as outlined under Article 26a of this Law, in order to comply with their obligations.	As above, 144-f (3)

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

Regarding appropriate measures to be taken and the role of the Agency, the Draft amendments reflect the AVMS Directive with the inclusion of all obligations and potential measures to be taken. The LAAMS now includes additional provisions related to: the registry of video-sharing platforms (Article 144-b); the fee for provision of video-sharing platforms (Article 144-g); the requirements on submission of data and information to the Agency (Article 144-h).

4.8.6. Concluding remarks and summary of findings

Previously in North Macedonia there was a lack of progress towards alignment of the national legislative framework with the 2018 AVMS Directive. As noted above, the project - EU for Freedom of Expression: Alignment of national media legislation with EU *acquis* and media standards – to address the issue of reform of the media legislative framework of North Macedonia was launched in September 2022. This is supported by the European Commission, under IPA 2020 and aims to ensure that the relevant media reforms are completed in 2023.²⁹⁹ Draft amendments developed in the context of this project and following discussions with a broad range of stakeholders were prepared for the Ministry of Information Society and Administration. Following a consultation on 13 March 2023,³⁰⁰ the draft amendments were published on the Government website for public consultation. Following this, the Draft Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) (2023) was submitted to Parliament on 11 May 2023. The amendments were adopted by Parliament in July 2023 and hence the legal framework is now aligned with the Audiovisual Media Services Directive.

The general principles and key values addressed in this country report are enshrined in the national legislative framework and experts from international organisations are positive about the development of freedom of expression. There are some issues of concern regarding political advertising during elections – which is paid for via the state budget.

²⁹⁹ European Union for Freedom of Expression: Alignment of National Media Legislation with the EU Acquis and Media Standards, <https://pmcg-i.com/european-union-for-freedom-of-expression-alignment-of-national-media-legislation-with-the-eu-acquis-and-media-standards/>

³⁰⁰ Website of the Ministry of Information Society and Administration: Open Call for a Public Debate regarding the Proposed Amendments. <https://mioa.gov.mk/?q=en/node/4595>

Press release regarding the consultation: <https://www.mioa.gov.mk/?q=mk/node/4596>



A key concern highlighted in a range of reports and recent research³⁰¹ was the way in which the national regulatory authority was funded. Although the regulator has several sources of funding (as outlined above), part of the funding from the State budget was combined with the mechanism for funding the Public Service Broadcaster and the Public Broadcast transmission Company. The mechanism under the previous version of the law allowed the Government discretionary powers to reduce the funding for all three institutions. This problem, also emphasised by the European Commission in their annual reports,³⁰² has been largely addressed in the amendments to the Law on Audio and Audio-Visual Media Services (LAAMS) adopted in July 2023 (see details under section 4.8.2.2 above).

However, an additional set of amendments – outside of the process to align the national legislative framework with EU *acquis* and European standards – have been elaborated in different forms since December 2022. A set of amendments was submitted to Parliament in November 2023 without final public consultation. These introduce a fund for state campaigns to be decided upon by parliamentary commissions and divided in a pre-prescribed fashion between various media outlets (see above). The amendments also impact on the independence and competence of the NRA with regard to the reviewing and revoking of licences on the basis of criteria related to repeated serious violations by broadcasters in relation to the content that is prohibited by the Law (see above). The list³⁰³ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

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

Table 137. Relevant documents, reports and opinions

Title	Main topics/ themes	Link
Briefing Note on Funding of Public Service Broadcasting from Expert Team: EU Freedom Of Expression in North Macedonia 7 April 2023 (Updated May 12th)	Analysis of the current and proposed future mechanism for funding the Public Service Broadcaster MRT, the Agency for	

³⁰¹ See for example: Funding of Public Service Media in the Western Balkans - Second Assessment Report On The Implementation Of Common Funding Principles. North Macedonia. 28 February 2021.

Report under the Empowering Society- Technical Assistance to Public Service Media in the Western Balkans.

See also: “Gap Analysis of the national legislative framework and proposed changes to the Law on Audio and Audiovisual Media Services (LAAMS) for compliance with the Audiovisual Media Services Directive (EU) 2018/1808 and relevant European standards”. December 2022.

Elaborated under the project EU for Freedom of Expression: Alignment of national media legislation with EU *acquis* and media standards. Prepared by Deirdre Kevin, Snezana Trpevska and Katrin Nyman-Metcalf.

³⁰² The mechanism had a negative impact on the financial sustainability of the public service broadcaster and the regulator. See for example European Commission (2022) North Macedonia Report : <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf>

³⁰³ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/List-3rd-country-participation_crea_en.pdf



<p>Prepared by Deirdre Kevin, Snezana Trpevska and Dragan Sekulovski.</p>	<p>Audio and Audiovisual Media Services and the Public Broadcast transmission Company.</p> <p>Elaborated under the project EU for Freedom of Expression in North Macedonia: Alignment of national media legislation with EU acquis and media standards.</p>	
<p>“Gap Analysis of the national legislative framework and proposed changes to the Law on Audio and Audiovisual Media Services (LAAMS) for compliance with the Audiovisual Media Services Directive (EU) 2018/1808 and relevant European standards”. December 2022.</p> <p>Prepared by Deirdre Kevin, Snezana Trpevska and Katrin Nyman-Metcalf.</p>	<p>Analysis of alignment of national legislation with the EU acquis based on legal comparative analysis and discussions with stakeholders.</p> <p>Elaborated under the project EU for Freedom of Expression in North Macedonia: Alignment of national media legislation with EU acquis and media standards.</p>	
<p>European Commission (2022), COMMISSION STAFF WORKING DOCUMENT North Macedonia 2021 Report.</p>	<p>European Commission report on North Macedonia</p>	<p>English: https://neighbourhoodenlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf</p>
<p>Funding of Public Service Media in the Western Balkans - Second Assessment Report On The Implementation Of Common Funding Principles. North Macedonia. 28 February 2021.</p> <p>Prepared by Boris Bergant and Radka Betsheva</p>	<p>Analysis of the funding mechanisms for public service broadcasting.</p> <p>Report under the Empowering Society - Technical Assistance to Public Service Media in the Western Balkans.</p>	
<p>European Commission (2021), COMMISSION STAFF WORKING DOCUMENT North Macedonia 2021 Report.</p>	<p>European Commission report on North Macedonia</p>	<p>English: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0294</p>
<p>Council of Europe (2020). Pluralism of Media Ownership in the New Media Environment – A Study for the Agency for Audio and Audiovisual Media Services, conducted by Jean-François Furnémont and Snezana Trpevska.</p>	<p>Media pluralism and media ownership</p>	<p>English: https://rmcoe.int/hf37-study-media-ownership-eng/16809f0272</p>



State Commission for the Prevention of Corruption (2021). National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025.	Corruption	Macedonian: https://dksk.mk/wp-content/uploads/2021/01/Nacionalna-strategija-DKSK-KONECNA.pdf
Association of Journalists (AJM) and Konrad Adenauer Stiftung (2018) <i>Comparative Analysis of Political Advertising in the Media</i> .	Political Advertising	Macedonian: http://star.znm.org.mk/wp-content/uploads/2019/01/Belegexemplar-2018-Comparative-Analysis-of-the-political-advertising-MK.pdf
AJM (2021) North Macedonia – Indicators on the Level of Media Freedom and Journalists’ Safety in 2020, p. 13.	Freedom of the media and safety of journalists	English: https://znm.org.mk/wp-content/uploads/2021/06/MK-ENG-2020.pdf
Trpevska, S. and Micevski, I. (2021) <i>Monitoring Media Pluralism in the Digital Era</i> . Country report: The Republic of North Macedonia (Florence: RSC/Centre for Media Pluralism and Media Freedom, July 2021).	Media pluralism	English: https://cadmus.eui.eu/bitstream/handle/1814/71968/the_republic_of_north_macedonia_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y

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

4.8.8. Data compilation

This Country report is based on information and materials supplied by the national expert Snezana Trpevska, research expert at the Research Institute on Social Development (RESIS) North Macedonia.



4.9. Serbia (RS)³⁰⁴ (Country report A³⁰⁵)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- The current legislative framework in Serbia is largely aligned with the 2010 AVMSD, and partly aligned with the 2018 AVMSD. The Government published a Strategy for development of the public information system in the Republic of Serbia for the period 2020-2025. This includes, as a key aim, the update of relevant media legislation.
- A new Working Group was established by the Government in January 2023 to develop draft amendments to the audiovisual media legislation. Draft Laws on Electronic Media and on Public Information and Media were published for public consultation on 7 September 2023.
- The general principles and key values examined in this country report are all addressed in the national legislative framework. There are detailed rules on transparency of media ownership but they are not systematically enforced.
- The independence of the national regulatory authority (NRA) – the Regulatory Authority for Electronic Media (REM) – is also addressed in this report with regard to the appointment of members of the Council, the financial independence of the REM, and the independence of the Council from political influence. The Strategy

³⁰⁴ The country report on Serbia incorporates the feedback received from Milan Todorović, General Secretary at the Regulatory Authority of Electronic Media (REM), during the checking round with the national regulatory authorities.

³⁰⁵ Country report A outlines the findings of Questionnaire A in relation to Group I countries, including Serbia.



(see above) had the aim of introducing several important reforms regarding the NRA. As will be outlined in the main text below, some of these concerns have been addressed in the Draft Law.

- This report also details a range of concerns raised by international organisations and civil society regarding media freedom, and also the recent public protests with regard to the “culture of violence” in Serbia and the levels of violent content on television.
- The list³⁰⁶ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.9.1. Introduction

In the context of this research, Serbia 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 the Government had to have fulfilled the conditions set out in the AVMS Directive by 31 May 2023. In March 2012, Serbia was granted EU candidate status. In September 2013 a Stabilisation and Association Agreement (SAA) between the EU and Serbia entered into force.³⁰⁷

4.9.1.1. 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 country report. It is important to note that this country report 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 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

³⁰⁶ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

³⁰⁷ Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part. Official Journal L 278, 18/10/2013 P. 0016 – 0473. [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1018\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1018(01)&from=EN).



provisions regarding European works, audiovisual commercial communications (ACC) 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 country report, are included below.

Table 138. Legal framework

Title	Status	Relevance	Link
Constitution of Serbia (2006) <i>Устав Републике Србије</i> (Serbian)	In force	Fundamental rights and freedoms including freedom of expression, non-discrimination	In Serbian http://www.ustavni.sud.rs/page/view/139-100028/ustav-republike-srbije In English http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution
Republic of Serbia Criminal Code (2019) <i>Кривични законик</i> (Serbian)	In force	Racial and other discrimination, incitement to hatred, incitement to terrorism, child pornography	In Serbian https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2005/85/6/reg In English https://www.mpravde.gov.rs/files/Criminal%20%20Code_2019.pdf
Law on Public Information and Media 2014 As amended in 2015 and 2016 <i>Закон о Јавном Информисању и Медијима</i> (2016) (Serbian)	In force	Legislation governing the freedom of public information and freedom of expression, including (among others) provisions on the Media Register, protection of media pluralism, rights and obligations pertaining to public information, procedures of legal protection, supervision of the application of legal provisions and penal provisions.	In Serbian http://www.rem.rs/uploads/files/Zakoni/Zakon_o_javnom_informisanju_i_medijima.pdf In English https://www.kultura.gov.rs/extfile/sr/5070/law-on-public-information-and-media.doc
Law on Electronic Media (2014) Amended in 2016 and 2021 <i>ЗАКОН о електронским медијима</i> (Serbian)	In force	The organisation and operation of the NRA, the obligations for audiovisual media services, conditions and procedures for issuing licenses for audiovisual media services, and other issues relevant to the field of electronic media.	In Serbian http://www.rem.rs/uploads/files/Zakoni/Zakon_o_elektronskim_medijima_83-20146_6-2016-dr.zakon.129-2021.pdf In English, 2014 version only https://www.kultura.gov.rs/extfile/sr/5067/law-on-electronic-media.doc



Title	Status	Relevance	Link
<p>Law on Public Broadcasting Services (2014)</p> <p><i>ЗАКОН о јавним медијским сервисима</i> (Serbian)</p>	In force	Operation of public service broadcasters, their business activities, guiding principles, the transparency of their operation, resources, funding and the process of selecting governing bodies.	<p>In Serbian http://www.rem.rs/uploads/files/Zakoni/Zakon_o_javnim_medijskim_servisima_83-2014_103-2015_108-2016_161-2020_129-2021.pdf In English, 2010 version only https://www.kultura.gov.rs/extfile/sr/5073/law-on-public-service-broadcasting.doc</p>
<p>Law on Electronic Communication (2010)</p> <p><i>Закон о Електронским Комуникацијама</i> (Serbian)</p>	In force	Electronic communications/ telecommunications/ frequency management	<p>In Serbian https://www.ratel.rs/uploads/documents/pdf_documents/documents/Zakon/Law%20on%20Electronic%20Communications%20rev%20June%202014.pdf In English, 2010 version only https://www.ratel.rs/upload/documents/Zakon/Electronic%20Communications%20Law.pdf</p>
<p>Law on Ratification European Convention on Transfrontier Television (2009)</p> <p><i>Закон о потврђивању Европске конвенције о пределу</i> (Serbian)</p>			<p>In Serbian only http://www.rem.rs/uploads/files/Zakoni/Zakon%20o%20potvrdivanju%20evropske%20konvencije%20o%20prekogranicnoj%20televiziji.pdf</p>
<p>Law on Advertising (2016) Amended in 2019</p> <p><i>Закон о оглашавању</i> (Serbian)</p>	In force		<p>In Serbian https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2016/6/4/reg Unofficial English translation https://www.tobaccocontrollaws.org/files/live/Serbia/Serbia%20-%20Law%20on%20Advertising%202016.pdf</p>
Draft laws			
<p>DRAFT Law on Public Information and Media, 2023</p>	<p>Consultation : 07/09/23 07/10/23</p>	<p>Legislation governing the freedom of public information and freedom of expression, etc</p>	<p>https://ekonsultacije.gov.rs/topicOfDiscussionPage/248/1</p>



Title	Status	Relevance	Link
Draft Law on Electronic Media, 2023	Consultation : 07/09/23 07/10/23	Intended to align with AVMSD	In Serbian only https://mit.gov.rs/tekst/sr/2610/obavestjenje-o-sprovedjenju-javne-rasprave-povodom-nacrta-zakona-o-elektronskim-medijima.php
Secondary legislation			
Rulebook on the protection of the rights of minors in the field of media services/2015 <i>Правилник о заштити права малолетника у области пружања медијских услуга (Serbian)</i>	In force	Protection of minors	In Serbian only http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20zastiti%20prava%20maloletnika%20u%20oblasti%20pruzanja%20medijskih%20usluga.pdf
Rulebook on the manner of imposing measures on media service providers <i>Правилник о начину изрицања мера пружаоцима медијских услуга (Serbian)</i>	In force	Measures and sanctions	In Serbian only http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20nacinu%20izricanja%20mera%20pruzaoциma%20medijskih%20usluga.pdf
Rulebook on the protection of human rights in the field of media services <i>Правилник о заштити људских права у области пружања медијских услуга (Serbian)</i>	In force	Human rights, including freedom of expression	In Serbian only http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20zastiti%20ljudskih%20prava%20u%20oblasti%20pruzanja%20medijskih%20usluga.pdf
Rulebook on criteria and manner of increasing the share of European audiovisual works/2015 <i>Правилник о критеријумима и начину повећања удела европских аудио-визуелних дела (Serbian)</i>	In force	European audiovisual works	In Serbian only https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/drugidrzavniorganizacijepripravnik/2015/72/1/reg
Rulebook on the procedure for issuing consent to the act on the transfer of a license for the provision of media services and acting upon the application for a change in the ownership structure/2015 <i>Правилник о поступку издавања сагласности на акт о преносу дозволе за</i>	In force	Media ownership transparency	In Serbian only http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20postupku%20izdavanja%20saгlasnosti%20ona%20akt%20o%20prenosu%20dozvoleza%20pruzanje%20medijske%20usluge%20i%20postupanje%20po%20priјavi%20



Title	Status	Relevance	Link
<i>пружање медијске услуге и поступању по пријави промене власничке структуре (Serbian)</i>			promene%20vlasnicke%20strukture.pdf
Rulebook on advertising and sponsorship in electronic media/2016 <i>Правилник о оглашавању и спонзорству у електронским медијима (Serbian)</i>	In force	Advertising and sponsorship	In Serbian only Http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20oglasavanju%20i%20sponzorstvu%20u%20elektronskim%20mediji.pdf

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

In 2020, the Government of Serbia introduced a Strategy for development of the public information system in the Republic of Serbia for the period 2020-2025.³⁰⁸ While this strategy has a main focus on broad issues in relation to the media and the need to update the Law on Public Information and Media (2016), it also discusses the need to update audiovisual policy (as regulated under the Electronic Media Law). In particular, several issues were raised regarding the need to strengthen capacities and independence of the NRA – the Regulatory Authority for Electronic Media (REM). This is discussed in more detail under section 4.9.2.2. below. The Government also adopted an accompanying Action Plan to the Strategy, the implementation of which has been delayed.

The Law on Public Information and Media (2016), deals (among other things) with freedom of public information and freedom of expression, the provisions on the Media Register, the roles of editors and journalists, media distribution, funding for public interest content, protection of media pluralism, the rights and obligations pertaining to public information, procedures of legal protection, supervision of the application of legal provisions and penal provisions. On 30 June 2021, the Ministry of Culture and Information of the Government of the Republic of Serbia established a Working Group to draft a version of the Draft Law on Amendments to the Law on Public Information and Media. The Working Group consisted of 35 members representing journalism and media associations, state bodies and institutions. The amendments were intended to address several key issues for reform as outlined in the Strategy. The Working Group developed the initial version of the Draft Amendments to the Law in September 2021 and its work was then suspended in the run up to the April 2022 elections. After the formation of the new government, a new Working Group was established in November 2022.

The Action Plan and the Strategy for development of the public information system have recognised the need to amend the Law on Electronic Media, in order to achieve

³⁰⁸ STRATEGY - development of the public information system in the Republic of Serbia for the period 2020-2025. Year "Official Gazette of RS", number 11 of 7 February 2020. "Official Gazette of RS", number 11 of 7 February 2020.

<https://www.pravno-informacionisistem.rs/SIGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/11/1/reg.>



compliance with the new AVMS Directive.³⁰⁹ In the 2022 Report on Serbia, the European Commission stated that no progress had been made with regard to audiovisual policy in the reporting period. They noted that the electronic media outlets are still regulated by the same legislation, pending amendments. In addition, there are increasing delays in the implementation of the media Strategy and Action Plan (see above), of December 2020.³¹⁰ In March 2023, a joint EU/OSCE report³¹¹ was published outlining the main changes to the Audiovisual Media Services Directive and the policy objectives of the revisions, and included proposed interventions in the Serbian Law in order to complete alignment. It is not clear whether the proposals in this document formed part of the drafting process. According to media reports³¹² a Draft Law on Electronic Media and a Draft Law on Public Information and Media were prepared and published for public consultation on 7 September 2023. The consultation ends on 7 October 2023.

4.9.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant current definitions with the AVMS Directive. Definitions are mainly present in the current Electronic Media Law, and in the Law on Public Information and Media. The Law on Advertising is also important for a range of definitions and provisions relevant to the AVMS Directive.

Table 139. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	<p>Yes – the current Law is aligned with the 2010 AVMSD.</p> <p>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.</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD in the Draft Law</p> <p>The article describes audiovisual media service as “television broadcast, on-demand audiovisual media service and audiovisual commercial communication” – rather than using “or”. This may be an issue of translation.</p>	<p>Law on Electronic Media (2014) Article 4, paragraph 1, item 3 ***</p> <p>Draft Law on Electronic Media (2013), Article 4 (1)</p>

³⁰⁹ STRATEGY - development of the public information system in the Republic of Serbia for the period 2020-2025. Year "Official Gazette of RS", number 11 of 7 February 2020. "Official Gazette of RS", number 11 of 7 February 2020.

<https://www.pravno-informacionisistem.rs/SlGlasnikPortal/eli/rep/sqrs/vlada/strategija/2020/11/1/reg>.

³¹⁰ EC (2022): COMMISSION STAFF WORKING DOCUMENT Serbia 2022 Report. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>

³¹¹ EU/ OSCE: (May 2023): Report on novelties in the 2018 revision of the Audiovisual Media Services Directive and proposed interventions into the Serbian Law on Electronic Media and the Law on Advertising.

³¹² <https://www.cenzolovka.rs/drzava-i-mediji/veljanovski-medijski-zakoni-najverovatnije-nece-biti-usvojeni-do-jula-moguci-razlog-izbori-na-jesen/>



Video-sharing platform service (VSP)	Yes - aligned with the 2018 AVMSD in the Draft Law	Draft Law on Electronic Media (2013), Article 4 (31)
Programme	Yes – the current law is aligned with the 2010 AVMSD and closely aligned with the 2018 AVMSD. It lacks reference to video clips. *** The Draft Law provides a definition of programme content but does not align with the Directive definition of programme,	Law on Electronic Media (2014) Article 4, paragraph 1, item 4 *** Draft Law on Electronic Media (2013), Article 4 (31)
User-generated video	Yes - aligned with the 2018 AVMSD in the Draft Law	Draft Law on Electronic Media (2013), Article 4 (3)
Editorial decision	The term “editorial decision” in this law is used in relation to provisions on jurisdiction. *** Yes - aligned with the 2018 AVMSD in the Draft Law	Law on Electronic Media (2014) Article 45, paragraph 3, items 1 and 2 *** Draft Law on Electronic Media (2013), Article 4 (29)
Editorial responsibility	A different definition is used in the Law on Public Information and Media – whereby media outlets are required to have an editor in chief, and their responsibility is outlined in the law (Article 48, paragraphs 1-5). The law also outlines the obligation of journalistic due diligence for both editors and journalists (Article 9, paragraphs 1 and 2). *** Closely aligned with the 2018 AVMSD in the Draft Law. Does not include phrase “Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided”.	Law on Public Information and Media (2014) Article 48, paragraphs 1-5, Article 9, paragraphs 1 and 2 *** Draft Law on Electronic Media, Article 4 (28)
Media service provider	Yes - aligned with the 2018 AVMSD.	Law on Electronic Media (2014), Article 4, paragraph 1 item 6 and Draft Law on Electronic Media, Article 4 (21)
VSP provider	Yes - aligned with the 2018 AVMSD in the Draft Law	Draft Law on Electronic Media, Article 4 (21)
Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD in the current and draft laws. It is a definition for “television media service”.	Law on Electronic Media (2014), Article 4, paragraph 1, item 10 and Draft Law on Electronic Media, Article 4 (15)
Broadcaster	Not mentioned	
On-demand audiovisual media service	Yes – aligned with the 2018 AVMSD	Law on Electronic Media, Article 4, Paragraph 1, Item 11



		and Draft Law on Electronic Media, Article 4 (2)
Audiovisual commercial communication (ACC)	Yes – aligned with the 2010 AVMSD Makes reference to both ACC in broadcasting and in on-demand services but without reference to user-generated content, as in the 2018 AVMSD. It also describes the relevant types of ACCs. *** No definition in the Draft Electronic Media Law	Law on Advertising (2016) Article 27
Television advertising	Yes – aligned with the 2018 AVMSD *** No definition in the Draft Electronic Media Law	Law on Advertising Article 27, sections 1-4
Surreptitious ACC	Yes – aligned with the 2018 AVMSD *** No definition in the Draft Electronic Media Law	Law on Electronic Media (2014), Article 4, section 1, paragraph 17
Sponsorship	Yes - aligned with the 2010 AVMSD – no references to user-generated videos and VSPs, as in the 2018 AVMSD. *** No definition in the Draft Electronic Media Law	Law on Advertising, Article 64
Teleshopping	Yes – aligned with the 2018 AVMSD *** No definition in the Draft Electronic Media Law	Law on Ratification of the European Convention on Transfrontier Television (2009), Article 2, paragraph 1, item g)
Product placement	Yes - aligned with the 2010 AVMSD – no reference to user-generated video. *** No definition in the Draft Electronic Media Law	Law on Advertising, Article 28, Paragraph 1 Also defined in the Rulebook on advertising and sponsorship in electronic media (Article 3)
European works	Yes – aligned with the 2018 AVMSD	Law on Electronic Media (2014), Article 4, paragraph 1, item 28 and Draft Law on Electronic Media, Article 4 (4)
Independent producer	Yes – the definition of independent producer is standard – as it includes the requirement that an independent producer is not linked in terms of ownership to a broadcaster	Law on Electronic Media, Article 4, paragraph 1, item 25 and Draft Law on Electronic Media, Article 4 (17)
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	The Law on Public information and Media under Article 79 forbids the violation of personal dignity (honour, reputation or piousness). Dignity of a victim of violence shall not be violated by showing or describing the scene of violence in the media or media content. Depicting a person in caricature, satire,	Law on Public Information and Media, Article 79, paragraph 1 *** Law on Electronic Media (2014),



	<p>collage or other similar form shall not be deemed the violation of dignity or the right to authenticity.</p> <p>***</p> <p>Article 50 stipulates that media services shall be provided in a manner that respects human rights and personal dignity in particular. It also refers to content that could harm physical, mental or moral development of children and youth, which must be labelled and not broadcast at a time when it can reasonably be expected that minors watch television.</p>	<p>Article 50</p> <p>***</p> <p>Equivalent articles in Draft Law on Electronic Media, Article 65 on protection of minors And Article 68 - Protection of Minors and Human Dignity with Regard to the Broadcasting of Reality Programme Content.</p> <p>Article 70 - Obligation to Respect Human Rights</p>
Definition of incitement to hatred (or equivalent)	<p>There is no specific definition of incitement to hatred (but the issue is addressed in the media legislation, for example under the Law on Electronic Media). The Regulator shall ensure that the programme content does not contain information which overtly or covertly encourages discrimination, hatred or violence based on any protected grounds.</p>	<p>Law on Electronic Media, Article 51</p> <p>***</p> <p>Equivalent provision: Draft Law on Electronic Media, Article 71</p>

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

Regarding definitions, the current legislation is closely aligned with the 2010 AVMS Directive, and partially aligned with the 2018 AVMS Directive. The Law on Advertising is an important source of definitions and provisions in the area of audiovisual commercial communications. There are certain changes needed in order for the definitions to fully align with the 2018 AVMS Directive, in particular to adjust definitions for ACCs to include reference to user-generated video and VSPs. The definition of audiovisual media service, and of editorial responsibility are not fully aligned. VSPs have not yet been incorporated into the scope of the Serbian legislation. There is no specific definition of incitement to hatred, but this is dealt with in the media laws, the Constitution and the Criminal Code (see under section 4.9.2. covering general principles and key values).

The Draft Law on Electronic Media (2023), which was published for consultation in September 2023, has included the majority of definitions relevant to the updated AVMS Directive. Definitions relevant to audiovisual commercial communications are not addressed in this law. The Law on Advertising, which should incorporate the updated provisions of the AVMSD related to advertising, is still under preparation (status 20 September 2023).

4.9.1.3. 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 140. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers	Yes – aligned with the 2010 AVMSD but not with the 2018 AVMSD *** Yes - aligned with the 2018 AVMSD in the Draft Law	Law on Electronic Media (2014), Article 45 *** Draft Law on Electronic Media, Article 58
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	Not mentioned *** Yes - aligned with the 2018 AVMSD in the Draft Law	Draft Law on Electronic Media, Article 58
Article 2 (5b). Requirement to maintain up to date list of the AVMS providers under national jurisdiction	Yes – aligned with the 2018 AVMSD. The REM maintains the Register of Media services and keeps record of on-demand audiovisual media service providers *** Yes - aligned with the 2018 AVMSD in the Draft Law	Law on Electronic Media (2014), Article 22 (7). *** Draft Law on Electronic Media, Article 58
Article 28a (paragraphs 1-5) regarding the establishment of the jurisdiction of VSPs	Yes - aligned with the 2018 AVMSD in the Draft Law	Draft Law on Electronic Media, Article 117
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 – aligned with the 2018 AVMSD in the Draft Law.	As above, Article 118
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 Serbia to European Audiovisual Observatory standardised survey

The legislative framework in force is in line with the 2010 AVMS Directive and partially aligned with the 2018 AVMS Directive, as it does not include provisions such as Article 2 (5a) requiring audiovisual media service providers to inform the NRA of changes in relation to their jurisdiction. In addition, the current law does not address the jurisdiction of VSPs, as VSPs have not yet been included in the scope of the legal framework in Serbia. The Draft Law on Electronic Media (2023) proposes to amend the legal framework regarding jurisdiction and includes the jurisdiction of VSPs.

The principle of freedom of reception and retransmission for AVMS is examined below.



Table 141. 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 and Draft Law are aligned with the 2018 AVMSD Freedom of reception and transmission is protected in specific Article 46 - Freedom of Reception and Retransmission	Law on Electronic Media (2014) Article 46 *** Draft Law on Electronic Media, Article 59
Article 3(2) - derogations from the principle of freedom of reception and transmission	The current law is closely aligned with the 2010 AVMSD and aligned with the ECTT, as regards derogations. Article 46 allows restrictions of the freedom of reception and retransmission, in the case of obvious, serious and severe violations of the provisions in relation to the protection of minors, as well as in the case of incitement to hatred based on race, gender, or religious or national affiliation, repeated at least twice in the previous 12 months. Restrictions can also be applied in order to preserve public order, to prevent the enforcement, investigation, detection, and prosecution of criminal offenders, to protect minors, to prevent incitement to hatred, and to prevent violations of human dignity, for the purpose of protection of public health, for the purposes of public safety, national security, and national defence, for the purpose of consumer protection. The law includes a procedure of notification of the service provider, and also a procedure for communication with the competent regulator in the country of origin of the audiovisual media service. ** Yes - aligned with the 2018 AVMSD in the Draft Law	Law on Electronic Media, Article 46 *** Draft Law on Electronic Media, Article 59

Source: Response of national expert of Serbia 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, it is important to note that the current legal framework aligns with the Convention on Transfrontier Television. Hence it is closely aligned with both the 2010 AVMS Directive and the 2018 AVMS Directive. It allows for derogations in relation to the violations of the rules regarding the protection of minors, prevention of incitement to hatred and other grounds (as outlined in the 2018 Directive, Article 3 (4)).



4.9.2. 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 142. General principles and keys values

General principle/ key value	Relevant provision/ provisions	References
Principle of non-discrimination	<p>Yes - the Constitution, under Article 21 prohibits discrimination on any grounds. Article 76 prohibits discrimination against national minorities. ***</p> <p>Article 75 of the Law provides for a general provision regarding the prohibition of discrimination for various reasons related to the basic human rights of citizens., and prohibits hate speech ***</p> <p>The equivalent article in the Draft Law on Public Information and Media (2023) is Article 87 ***</p> <p>The Law on Electronic Media also prohibits hate speech</p>	<p><i>Ustav Republike Srbije/</i> Constitution of Serbia (2006) Article 21, Article 76 ***</p> <p>Law on Public Information and Media (2014), Section Prohibition of Hate Speech, Article 75 ***</p> <p>Draft Law on Public Information and Media (2023), Article 87 ***</p> <p>Law on Electronic Media (2014), Article 51 - Prohibition of Hate Speech</p>
Prohibition of incitement to hatred and incitement to violence	<p>In the Constitution, Article 49 prohibits the incitement of racial, ethnic and religious hatred. Activities of political parties aiming at forced overthrow of the constitutional system, violation of guaranteed human or minority rights, inciting racial, national or religious hatred, shall be prohibited (Article 5) Regarding the freedom of association, the Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or incitement of racial, national and religious hatred (Article 55). The freedom of the media may be limited only when this is necessary in a democratic society to (among others) prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence (Article 50). The equivalent article in the Draft Law on Public Information and Media (2023) is Article 87. ***</p>	<p>Constitution of Serbia Article 49 Article 5 Article 55 Article 50 ***</p> <p>Law on Public Information and Media, Section Prohibition of Hate Speech, Article 75 Draft Law on Public Information and Media (2023), Article 87 ***</p>



	<p>Article 75 of the Law on Public Information and Media includes a general provision prohibiting the publication of information that incites hatred and violence against an individual or a group of individuals. ***</p> <p>Draft Law on Electronic Media, Article 71 prohibits hate speech ***</p> <p>Article 387 of the Criminal Code criminalises racial and other discrimination. It provides criminal sentencing for making public texts or images or any other representation of ideas or theories advocating or encouraging hatred, discrimination or violence against any person or group of persons (paragraph 4). Public approval of, or denial of the existence of, or the gravity of genocide, crimes against humanity and war crimes committed against a group of persons or a member of the group is also a crime (paragraph 5). Public threats against a person or group of persons is also a crime (paragraph 6). In addition, Article 317 criminalises the instigation of national, racial and religious hatred and intolerance. For example, national, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia, shall be punished by imprisonment of six months to five years (paragraph 1). Where offences under this article lead to riots, violence or other grave consequences to co-existence of peoples, national minorities or ethnic groups living in Serbia, the prison sentences shall be higher (paragraph 3). Article 54a concerns the special circumstance for determining a punishment for a criminal offence committed in hatred. In this case the court shall consider such circumstances as aggravating circumstances.</p>	<p>Draft Law on Electronic Media, Article 71 ***</p> <p>Republic of Serbia Criminal Code (2019)</p> <p>Article 387 - Racial and Other Discrimination Article 317 - Instigating National, Racial and Religious Hatred and Intolerance Article 54a - Special Circumstance for Determining a Punishment for a Criminal Offence Committed in Hatred</p>
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism</p>	<p>All content must respect human dignity and the fundamental rights of others. Content may not inappropriately highlight violence or incite racial intolerance. ***</p> <p>The Law on Electronic Media prescribes obligations of media service providers in relation to program content, in Article 47, and these include not providing content that (among others) highlights and supports violence, criminal or other misconduct, or providing content that abuses the credulity of viewers and listeners. ***</p> <p>The Law on Public Information and Media prohibits the public display of pornographic content in a manner making it accessible to minors (Article 78). There are no references to child pornography. The Law on Public Information and Media also stipulates that ideas, opinions or information published in the media shall not incite discrimination, hate or violence against an individual or a group of individuals (Article 75). The equivalent provisions in the Draft Law on Public Information and Media (2023) are Article 87 regarding incitement to hatred and Article 90 regarding pornography. ***</p>	<p>Law on Ratification of the European Convention on Transfrontier Television, Article 7, paragraph 1 ***</p> <p>Law on Electronic Media (2014), Article 47, Paragraph 1, Item 4 ***</p> <p>Law on Public Information and Media, Section Prohibition of Public display on Pornography, Article 78, and Section Prohibition of Hate Speech, Article 75, Paragraphs 1 and 3</p>



	<p>As outlined above, the Criminal Code under Article 387 criminalises racial and other discrimination. In addition, Article 317 criminalises the instigation of national, racial and religious hatred and intolerance. Article 391a criminalises public incitement to commit of terrorist offences, with imprisonment of one to ten years. Article 185 criminalises child pornography, including creation, production, procurement, possession, sale, public exhibition etc.</p> <p>***</p> <p>In the Draft Law on Electronic Media, under Article 72, incitement to terrorism and the distribution of child pornography are addressed where the Regulatory Authority must ensure that programmes of the media service providers do not contain such content.</p>	<p>Draft Law on Public Information and Media (2023), Article 87 and Article 90</p> <p>***</p> <p>Republic of Serbia Criminal Code (2019) Articles 387, 317, 391a, 185</p> <p>***</p> <p>Draft Law on Electronic Media, Article 72 – Prohibition of Broadcasting of Certain Programme Contents</p>
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Source: Response of national expert of Serbia 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 addresses the freedoms and rights, including the principle of non-discrimination. The Criminal Code contains detailed provision on discrimination, incitement to hatred or violence, and xenophobia etc. These are also reflected in the relevant media legislation. The Criminal Code also criminalises incitement to terrorism and the production, distribution, display etc. of child pornography.

The Draft Law on Electronic Media addresses the issues of certain programme contents such as incitement to terrorism, child pornography (both under Article 72), and content that encourages discrimination, hatred or violence against any group (Article 71). However, the provisions do not prohibit such content directly, but place an obligation on the Regulatory Authority to ensure that media service providers do not broadcast such content. This is a rather unusual approach to regulation of content. Here, the responsibility for content rests with the Regulatory Authority and not the media service provider. As a general practice, such content is prohibited and is the responsibility/ obligation of the media service provider. It is the role of the Regulatory Authority to introduce additional rule-books, monitor content and/ or respond to complaints, and penalise the media content services when they broadcast such content.

The Draft Law on Public Information and Media (2023) introduces exemptions from responsibility under Article 88, whereby there is no breach of the prohibition of hate speech where the content is part of a journalistic text that has been published:

- 1) *Without the intent to incite discrimination, hate or violence against an individual or a group of individuals referred to in Article 87 hereof, especially if such information is a part of an objective journalistic report;*



2) *With the intent to provide a critical view of the discrimination, hate or violence against an individual or a group of individuals referred to in Article 87 hereof, or of occurrences that constitute or might constitute incitement of such behaviour.*

While paragraph 2 is a rational protection of speech, it is not clear whether cases falling under paragraph 1 would be subject to court decisions to assess whether in the context of a journalistic report, there was no intent to incite discrimination, hate or violence.

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

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

Table 143. Freedom of expression

General principle/ key value	Relevant provision/ provisions	References
Freedom of expression/ right to information	The freedom of thought and expression are guaranteed in the Constitution, as well as the right to information.	Constitution of Serbia/2006 Article 46
Freedom of expression/ freedom of the media/ prohibition of censorship / protection of journalists	The Law on Public Information and Media also guarantees the freedom of information, and prohibits: censorship; discrimination against media professionals; putting pressure, threatening or blackmailing editors, journalists or sources of information; physical assaults on an editor, a journalist or other persons involved in gathering and publishing information through the media. The freedom of public information shall not be violated by exerting influence or control over the means of printing and distribution of papers or over electronic communication networks used for the distribution of media content. Media services are required to enable the expression of ideas and opinions that are present in the community. The state, provinces and local government should encourage diversity of media content, the freedom of expression of ideas and opinions, and free development of independent and professional media.	Law on Public Information and Media (2014) Articles 4, 10, 15 Article 6- media pluralism
Freedom of expression/ freedom of opinion	The Regulator has as its purpose (among others) the protection and development of freedom of opinion and expression, in order to protect the public interest in the field of electronic media and the protection of electronic media users. *** The Draft Law on Electronic Media expands the obligations to include media service providers who are in relation to their programme content, to:	Law on Electronic Media (2014) II Regulatory body for electronic media Article 5 - Foundation paragraph 1 *** Draft Law on Electronic Media (2023), Article 3 in



	ensure diversity of content in terms of the freedom of expression, political and critical thinking, as well as within the framework of the type and character of the programme	relation to interpretation of the law Article 5 – principles for regulation Article 6 – Regulatory Authority role in protecting freedom of expression Article 61 – Obligations of media service providers
Freedom of expression/ freedom of opinion	Media service providers are obliged to provide freely, truthfully, objectively, complete and timely information, and especially to keep news and current affairs programs true, to objectively represent facts and events and to encourage the free formation of opinions.	Rulebook on the protection of human rights in the field of media services (2015)

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

Freedom of expression is guaranteed in the Constitution, and in the relevant media legislation. The NRA - Regulatory Authority for Electronic Media (REM) - published a Rulebook on the protection of human rights in the field of media services, which obliges media services to (among others) encourage the free formation of opinions. The Law on Public Information and Media (2014) also contains specific provisions intended to protect journalists in the context of their work and prohibits: putting pressure on, or threatening or blackmailing editors, journalists or sources of information; physical assaults on an editor, a journalist or other persons involved in gathering and publishing information through the media.

The European Commission's report of 2022 noted that

cases of threats, intimidation and violence against journalists remain a source of concern, especially at local level. This was also reported in the Ombudsman's 2021 report. Verbal attacks and smear campaigns against journalists continued. Recurrent statements by high-ranking state officials on the daily and investigative work of journalists are preventing the creation of an environment where freedom of expression can be exercised without hindrance.³¹³

Reports from international organisations dealing with freedom of expression and media raise similar concerns and stress that independent journalists face pressure, harassment, threats, physical attacks and smear campaigns by government officials, pro-government media and citizens. The Human Right Watch report also notes an insufficient reaction of the state to attacks on journalists.³¹⁴ Reporters Without Borders recently published a list of recommendations to officials elected in presidential and parliamentary elections in April 2022, insisting on the need to demonstrate strong support for the right to information. Among other things, the report asks for systematic and public condemnation of smear attempts and verbal attacks, especially when perpetrated by politicians, and the

³¹³ EC (2022): COMMISSION STAFF WORKING DOCUMENT Serbia 2022 Report. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>.

³¹⁴ Human Rights Watch (2022): Report on Serbia 2021, <https://www.hrw.org/world-report/2022/country-chapters/serbia/kosovo>.



demonstration of zero tolerance for politicians who attack the media. In addition, it is requested that state authorities respond to all questions and requests for information from the media in an equitable manner.³¹⁵ A recent Freedom House report added that media freedom is also undermined by lack of transparency in media ownership, editorial pressure from politicians and politically connected media owners, direct pressure and threats against journalists, high rates of self-censorship and insufficient independence of the Regulator.³¹⁶ These reports note that five media organisations left the Working Group for the Security and Protection of Journalists following government-orchestrated campaigns against independent media. Another association, UNS, left the Working Group at the end of 2022.

The Council of Europe (COE) has been particularly concerned with the increase of hate speech in the media leading to growing levels of intolerance in society.³¹⁷ The COE has emphasised the need to focus on journalists' safety and media freedoms through increasing the knowledge of responsible authorities and has been supporting initiatives in this area.³¹⁸ It is noted that special attention should be given to gender aspects and gender-sensitive measures for the protection of female journalists who are found to be a particularly vulnerable group. The Commissioner for Human Rights of the Council of Europe stated that access to information has been a "collateral victim" of the measures taken by the Serbian government, especially in the face of the COVID-19 pandemic, emphasizing that there is ongoing "filtering of information and delays in responses to requests" despite the fact that timely information is essential for public understanding and for protecting individuals. Particular concern was expressed regarding cases of negative treatment of journalists who were prevented from attending press conferences, from obtaining information or from documenting the activities of law enforcement officials.³¹⁹

The Special Rapporteur of the UN on the right to freedom of expression, Ms Irene Khan, visited Serbia in March and April 2023.³²⁰ She stated that legal reforms in Serbia must be accompanied by the effective implementation of laws to counter dangerous rhetoric against minorities, journalists and activists. In the preliminary observations from the visit, she noted that there were three key issues. A toxic public discourse in Serbia, where freedom of expression is being weaponized to denigrate and suppress political dissent and feed ethnic and identity-based bias and hatred. According to her statement, the relevant institutions are ineffective, including the REM, which does not take appropriate action to

³¹⁵ Reporters Without Borders (2022): Ten recommendations to newly elected officials for strengthening press freedom and trustworthiness of information. Paris, 2022, <https://rsf.org/en/news/serbia-rsfs-ten-recommendations-newly-elected-officials-strengthening-press-freedom-and>

³¹⁶ Freedom House Report (2022): Serbia <https://freedomhouse.org/country/serbia/freedom-world/2022>.

³¹⁷ JUFREX (2020): Report on the use of Hate Speech in Serbian Media. By Ivana Krstić, <https://rm.coe.int/hf25-hate-speech-serbian-media-eng/1680a2278e>.

³¹⁸ Judges, public prosecutors and police officers who need to have more trainings on media freedom and journalists' safety, and in that way, in 2021 and 2022 as a part of Jufrex Programme, CoE organised in Serbia trainings for police officers in the system of Contact points for the safety of the journalists, accessed <https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-in-south-east-europe>.

³¹⁹ Statement, Press freedom must not be undermined by measures to counter disinformation about COVID-19, Commissioner for Human rights Ms Dunja Mijatović, CoE, 2020 and 2021, https://www.coe.int/en/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/press-freedom-must-not-be-undermined-by-measures-to-counter-disinformation-about-covid-19?_101_INSTANCE_ugj3i6qSEkhZ_languageId=en_GB.

³²⁰ <https://news.un.org/en/story/2023/04/1135427>



promote pluralism in media content, and allows smear campaigns and harassment to continue, and who also licensed four media outlets that have consistently violated media regulations as well as international standards and ethical and professional standards. The final problem relates to the safety of journalists including attacks on journalists and increasing Strategic Legal Action Against Public Participation (SLAPP) cases, according to this source.³²¹

There has been an ongoing campaign to discredit several television channels perceived as being critical of the Government including N1TV.³²² Most recently, in the context of protests on the levels of violence on Serbian TV following the tragic school shootings in Serbia (see also under the section on protection of minors), while the public, civil society, and academics blame government-controlled media outlets,³²³ the Government directly blamed N1TV for the school shootings. The European Federation of Journalists, in June 2023, called for support for the journalists of N1TV who are facing increasing threats and intimidation.³²⁴

Finally, there are allegations regarding the state advertising budget and preferential treatment for certain media whose editorial policy supports government policy. According to expert analyses, the advertising of public companies and capital companies is under the control of the state, which exerts political influence on the allocation of funds. Advertising in media close to the authorities is especially visible in local communities.³²⁵

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

The NRA in Serbia is the Regulatory Authority for Electronic Media. The REM is responsible for (among others) defining strategies for development of the media sector, issuing bylaws, granting licences, maintaining the register of media services, supervising media services, handling complaints, sanctioning services, developing rules and codes, initiating the preparation and amendment of laws, regulations and general acts, and carrying out research and market analyses. According to Article 6 of the Law on Electronic Media (2014), the Regulatory bodies are the Council and the President of the Council. The Council decides on all matters within the purview of the Regulator. The Regulator shall be represented by the President of the Council, and in his/her absence by the Deputy President of the Council.

³²¹https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewikvOFg9f_AhU90_EDHOf2DRIOFnoECC00AO&url=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fbelgrade%2Fprotecting-freedom-of-expression-and-of-the-media-in-serbia&usq=AOvVaw18aJVLpMgF8F8RikbmJYAX&opi=89978449

³²² <https://www.voanews.com/a/press-freedom-serbias-besieged-n1-broadcaster-blames-president-harassment/6178085.html>

³²³ Politico (June 4, 2023): Thousands protest 'culture of violence' in Serbia.

<https://www.politico.eu/article/serbia-culture-of-violence-protests/>

³²⁴ <https://europeanjournalists.org/blog/2023/06/02/serbia-support-for-n1-journalists-facing-increasing-threats-and-intimidation/>

³²⁵ See more detail here: Regulation of promotional activities of public entities in the media sector, Transparency Serbia, <https://transparentnost.org.rs/index.php/sr/aktivnosti-2/naslovna/11692-regulacija-promotivnih-aktivnosti-javnih-entiteta-u-media-sector>.



Table 144. Independence of National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government	<p>Yes – aligned with the 2018 AVMSD</p> <p>The REM is an independent Regulatory organisation as a legal entity that exercises public authority for the purpose of the effective implementation of the defined policy in the provision of media services in the Republic of Serbia.</p> <p>The Regulator is functionally and financially independent of government bodies and organisations, media service providers and operators (Article 5, paragraphs 1 and 2).</p> <p>***</p> <p>Equivalent provisions as above (Article 6)</p>	<p>Law on Electronic Media (2014) Article 5, paragraphs 1 and 2,</p> <p>***</p> <p>Draft Law on Electronic Media (2023), Chapter II Regulatory Authority for Electronic Media Article 6 - Establishment</p>
NRAs should exercise their powers impartially and transparently	<p>Yes - aligned with the 2018 AVMSD</p> <p>The work of the Regulator is open to the public, and published on the website. The Regulator shall make the acts available to the public, as well as other full and updated data and information within its scope (Article 38). No one has the right to affect the work of the Council members in any way, nor are they obliged to respect anybody's instructions in relation to their work, except for court decisions rendered in the judicial review proceedings of the Council (Article 13, paragraph 3).</p> <p>When imposing any measure on a media service provider (warnings, revoking of licences etc), the Regulator shall observe the principles of objectivity, impartiality and proportionality (Article 28, paragraph 3).</p> <p>Article 40 requires the regulator to conduct public hearings in relation to the preparation of general acts.</p> <p>***</p> <p>Article 5 addresses Principles for Regulating the Area of Media Service Provision and requires : impartiality, proportionality and publicity in the procedures conducted by the Regulatory Authority (paragraph 7).</p> <p>The President of the Council shall a.o. ensure transparency of the work of the Regulatory Authority (Article 9).</p> <p>Article 51 addresses the transparency of the work of the NRA (and reflects the current Article 38, see above).</p> <p>Licensing procedure shall be transparent (Article 88)</p>	<p>Law on Electronic Media, Article 38, Article 13, paragraph 3 Article 28, paragraph 3 Article 40</p> <p>***</p> <p>Draft Law on Electronic Media (2023), Article 5 (7) Article 9 Article 51 Article 88</p>
Clear definition of the competences and powers of the NRAs outlined in the law	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 22 outlines in detail, the scope of the work of the NRA.</p> <p>***</p> <p>Article 7 of the Draft Law outlines the Scope of work of the Regulatory Authority.</p>	<p>Law on Electronic Media, Article 22</p> <p>***</p>



		Draft Law on Electronic Media (2023), Article 7
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets	<p>Yes – aligned with the 2018 AVMSD</p> <p>The financing of the Regulator shall be done in accordance with the financial plan adopted by the Council of the REM for each year (Article 34, paragraph 1).</p> <p>Approval of the financial plan under paragraph 1 of this Article shall be given by the Parliament (Article 34, paragraph 4).</p> <p>The revenue of the Regulator is based on fees that the media service provider pays for the right to provide media services, in accordance with the law (Article 35). The provision of additional funds from the state budget, in accordance with paragraph 8 of this Article does not affect the independence of the Regulator (Article 34, paragraph 10).</p> <p>***</p> <p>The Draft Law under Article 26 states explicitly that: The Regulatory Authority shall have the necessary technical, financial, and human resources to carry out the tasks within its competence.</p> <p>Article 46 on the financial plan of the NRA reflects the current Article 34 (See above).</p>	<p>Law on Electronic Media, Article 34, paragraphs 1, 4 and 10</p> <p>Article 35</p> <p>***</p> <p>Draft Law on Electronic Media (2023), Article 26</p> <p>Article 46</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>Yes – aligned with the 2018 AVMSD</p> <p>The Council of the Regulator (the Council) has nine members who are elected from the ranks of distinguished experts in the field (media experts, economists, lawyers, telecommunication engineers, etc.) (Article 7, paragraphs 1 and 2).</p> <p>A range of actors propose the Members of the Council: a competent committee of the Parliament; a competent committee of the Parliament of the Autonomous Province of Vojvodina; universities accredited in the Republic of Serbia by mutual agreement; associations of electronic media services; and/or associations of journalists in Serbia; professional associations of film, stage and theatre artists and professional associations of composers; associations dealing with freedom of expression and the protection of children; national councils of national minorities, by mutual agreement; churches and religious communities, by mutual agreement (Article 9). The procedure for proposing and the manner of election are determined by Articles 10 and 11. Issues of incompatibility are covered in Article 12, and independence of the Council members in Article 13. Article 16 deals with dismissal of members of the Council and Article 18 deals with suspension of a Council Member.</p> <p>***</p>	<p>Law on Electronic Media, Article 7, paragraphs 1 and 2</p> <p>Articles 9, 10, 11, 12, 13, 16, 18.</p> <p>***</p> <p>Draft Law on Electronic Media (2023), Articles 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24</p>



	<p>Article 10 outlines the necessary competences of the members of the Council.</p> <p>Article 11 indicates the majority vote of the National assembly for candidates nominated.</p> <p>Article 12 indicates the institutions who propose / nominate members of the Council.</p> <p>The draft law proposes changes to the current law as it no longer includes the following: “a competent committee of the Parliament; a competent committee of the Parliament of the Autonomous Province of Vojvodina”.</p> <p>Hence, Parliamentary Committees no longer propose candidates.</p> <p>However, they choose the final selection from the candidates proposed by other civil society and academic and cultural entities. (Article 13)</p> <p>A public interview of the candidates takes place (article 14).</p> <p>Incompatibility issues / conflict of interest are outlined (Article 15). The mandate is for 6 years and not renewable (Article 17).</p> <p>Articles 18 and 19 and 20 outline conditions of termination of mandate, dismissal and suspension (21).</p> <p>The Director is appointed by the Council on the basis of a public selection procedure (Article 24). The Director’s mandate is 5 years and can be renewed twice (potential mandate of 15 years (Article 24). The same conditions for termination apply (Articles 18 and 19).</p>	
<p>Existence of effective and independent appeal mechanisms.</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>Appeal procedures are regulated under Articles 41 and 42 with regard to general administrative procedures.</p> <p>***</p> <p>Equivalent references in the Draft Law regarding application of general administrative procedure (Article 54) and Judicial review (Article 55)</p>	<p>Law on Electronic Media, Articles 41 and 42, ***</p> <p>Draft Law on Electronic Media (2023), Articles 54 and 55</p>
<p>Provisions in the law that support cooperation between NRAs</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 27, paragraph 3 stipulates that the regulator shall work with Regulatory bodies of other countries in the field of providing media services, i.e. relevant international organisations on matters within its jurisdiction.</p> <p>***</p> <p>Equivalent references in the Draft Law under Article 30.</p>	<p>Law on electronic Media, Article 27 (3) ***</p> <p>Draft Law on Electronic Media (2023), Article 30</p>

Source: Response of national expert of Serbia 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 minimum requirements of the 2018 AVMSD. However, there are issues with regard to the implementation of these provisions in practice. As emphasised by the European Commission (EC), in its 2022 Report:



“The independence of the Regulatory Body for Electronic Media needs to be strengthened to enable it to efficiently safeguard media pluralism”.³²⁶

The section below outlines the range of concerns regarding the current legislation and it will be followed by a brief overview of proposed changes in the draft law.

In 2020, the Government of Serbia introduced a Strategy for development of the public information system in the Republic of Serbia (see above).³²⁷ The Strategy notes the need to update audiovisual policy (as regulated under the Electronic Media Law). In particular, several issues were raised regarding the need to strengthen capacities and independence of the NRA – the REM.

The Strategy recommends changes regarding (in summary): the processes for nominating candidates for members of the REM Council; the need to exclude the National Assembly and the executive authorities from the process of adopting the REM Statute and by-laws, so that the REM Council adopts them independently (following appropriate consultations etc); improvement of the procedure for the adoption of the REM financial plan; improvement of the status of employees in the REM and enhancement of the professionalization of the REM; a clearer role of the REM in monitoring the media during election campaigns; the adoption of a media content monitoring plan; a consideration of providing other sources of funding, apart from the fee for the right to provide media services, for the smooth operation of the regulator; amendment of the media legislation to allow for the REM to impose monetary sanctions in addition to existing measures in case of violation of regulations; and a strengthening of the responsibility and openness of the Regulatory Body for Electronic Media towards the public.³²⁸ The implementation of the Action Plan has been limited so far, while amendments of the media laws, including the role of the REM, were scheduled for a later stage, which is now foreseen in 2023.

The Commission Report further refers to the report of the ODIHR (OSCE Office for Democratic Institutions and Human Rights) on the 2022 elections. In its final report,³²⁹ the ODIHR stated that

the national public broadcasters had covered the campaign activities of all contestants equitably but provided extensive uncritical news coverage to public officials who were also candidates. Private broadcast media with national coverage presented the election campaign without meaningful editorial input and focused their news coverage on state officials.

³²⁶ EC (2022): COMMISSION STAFF WORKING DOCUMENT Serbia 2022 Report. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>

³²⁷ STRATEGY - development of the public information system in the Republic of Serbia for the period 2020-2025. Year "Official Gazette of RS", number 11 of 7 February 2020. "Official Gazette of RS", number 11 of 7 February 2020.

<https://www.pravno-informacionisistem.rs/SiGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/11/1/reg>.

³²⁸ Ibid.

³²⁹ Republic of Serbia Presidential and Early Parliamentary Elections. 3 APRIL 2022. ODIHR Election Observation Mission. Final Report. https://www.osce.org/files/f/documents/0/0/524385_0.pdf



The Commission Report also quoted the ODIHR statement that the REM remained overall passive in the campaign period and that the “effectiveness of the newly established TSB³³⁰ [...] was undermined by its lack of enforcement powers and disagreements between members nominated by the REM and those by the opposition.”

The competent parliamentary committee is responsible for selecting the candidates for the REM Council, and, according to some local stakeholders, the Committee has directly influenced the election of individual members of the Council (in the case of election of Council members at the suggestion of civil society organisations). In May 2023, the journalism and media associations called for the initiation of a procedure to dismiss the REM Council Members.³³¹ The associations and unions claim that the REM directly violates provisions of Article 5 of the Electronic Media Law as “*it does not contribute to the preservation, protection and development of freedom of opinion and expression and does not protect the public interest in the field of electronic media and does not protect users of electronic media services.*”

As noted above under the section “Freedom of expression, freedom of the media and prohibition of censorship”, the Special Rapporteur of the UN on the right to freedom of expression, Ms Irene Khan, following a visit to Serbia in March and April 2023, also expressed concerns regarding the effective functioning and independence of the regulator.³³²

The following provides a brief overview of proposed changes in the draft law with reference to the concerns outlined above. However, this should not be considered as a comprehensive legal review of the Draft law. It is likely that such reviews will be carried out by the Council of Europe or the OSCE in the near future.

The Draft Law changes the processes for nominating candidates for members of the REM Council and excludes the National Assembly (and regional) from this process. The parliamentary committee still compiles the final list of candidates from the nominees and these undergo a public interview.

Article 29 specifies that “the Regulatory shall issue rulebooks, instructions, recommendations, and enactments for the application of the regulations to ensure more efficient implementation of this Law.” There appears to be no provision according to which the National Assembly and the executive authorities are engaged in the process of adopting the REM Statute and by-laws.

The Strategy (referred to above) emphasised the need for improvement of the procedure for the adoption of the REM financial plan. The relevant provision in the draft law now includes the phrase that the plan should be adopted “for each year at least three

³³⁰ The inter-party dialogue (IPD) is facilitated by the European Parliament, which established a Temporary Supervisory Body (TSB) to implement media-related measures. The body consists of 12 members – 6 nominated by REM and 6 by opposition parties. The TSB became operational in October 2021.

³³¹ <https://en.nuns.rs/journalists-and-media-associations-we-request-initiation-of-procedure-for-dismissal-of-rem-council-members/>

³³² Similar conclusions regarding these issues are outlined in a recent report by the Bureau for Social Research (May 2023) – Alternative Report on the work of Regulatory Authority for Electronic Media (REM).



months before the beginning of the financial year.” This would suggest an attempt to improve the procedure.

With regard to the following two recommendations from the aforementioned strategy: “a clearer role of the REM in monitoring the media during election campaigns; the adoption of a media content monitoring plan,” these appear to be addressed under Article 33 – Monitoring Plan.

In addition, the strategy recommended the “amendment of the media legislation to allow for the REM to impose monetary sanctions in addition to existing measures in case of violation of regulations.” In the Draft Law, Articles 123, 124, and 125 outline a range of fines for offences and misdemeanours. 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. In this context, the Rulebook on the protection of minors in the field of media services” is also an important source of regulation.

Table 145. Protection of minors

AVMSD and the protection of minors	In line with AVMSD	References
Obligations to protect minors from harmful content, via watershed/scheduling, age verification tools or other technical measures	Yes - aligned with the 2018 AVMSD Article 50 (paragraph 3) provides the general obligation to ensure that such harmful content must be clearly labelled and not broadcast at a time when it can reasonably be expected that minors may see it. Pornography, scenes of brutal violence, and other content is forbidden (Article 68). Article 68 also addresses the responsibilities of media service providers, watersheds, complaints and warning signs. Article 61 deals with on-demand media services: content (and services) to ensure that such harmful content is made accessible in a way that ensures that minors will not normally hear or see it (such as protected services with conditional access). *** These rules are further expanded in the “Rulebook on the protection of minors in the field of media services” providing more detail regarding definitions of harmful content, and also guidelines on categorising, labelling and scheduling content.	Law on Electronic Media (2014) Article 50, paragraph 3 Article 68 Article 61 *** Equivalent articles in Draft Law on Electronic Media (2023) Article 64 – general Provisions about the Protection of Minors Article 65 – Programme Content that May impair the Development of Minors
Prohibition of commercial use of personal data of minors collected when implementing these measures	Yes – aligned with the 2018 AVMSD	Draft Law on Electronic Media (2023) Article 65 (with reference to regulations governing



		the protection of personal data).
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	Yes – aligned with the 2018 AVMSD Media service providers are required to clearly indicate the programmes that can endanger minors or are unsuitable for them, and to warn their guardians (Article 68, paragraph 10). As above, Article 50, paragraph 3 deals with labelling of content. *** The Law on Public Information and Media can impose fines on the publication of content of media that may hinder the minors’ development when it is not clearly and visibly marked.	Law on Electronic Media Article 50, paragraph 3 Article 68, paragraph 10 *** Equivalent article in Draft Law on Electronic Media (2023), Article 65 *** Law on Public Information and Media, Article 140, paragraph 1, item 2
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	Yes – this is aligned with the 2018 AVMSD. Advertising of tobacco and tobacco products is prohibited (Article 50). Electronic cigarettes are also banned (Article 53). Limits related to children’s programming regarding advertising for alcoholic beverages (Article 21). Under Article 46, alcoholic beverages with an alcohol content of less than 20% can be advertised on electronic media between 6:00 p.m. and 6:00 a.m. and alcoholic beverages with an alcohol content of more than 20% can be advertised on electronic media between 11:00 p.m. and 6:00 a.m.	Law on Advertising Article 50, 53 Article 21, Article 46
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – this is aligned with the 2018 AVMSD.	Law on Advertising Article 21
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Yes – this is closely aligned with the 2018 AVMSD. The Law on advertising under Article 5 introduces the possibility for a co-regulatory approach. Media service providers, may, with the consent of the regulatory body for electronic media, independently or jointly determine special rules regarding inappropriate advertising of HFSS food or beverages, which is broadcast before, during or immediately after program content intended for children.	Law on Advertising Co-regulation Article 5a
Prohibiting of product placement in children’s programmes	Yes - aligned with the 2018 AVMSD under Article 28 of the Law on Advertising.	Law on Advertising Article 28 paragraph 3

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

According to the information provided in the European Audiovisual Observatory’s survey, the national legislative framework is largely aligned with the 2018 AVMS Directive as regards the protection of minors in audiovisual media services. The prohibition of commercial use of personal data of minors collected in the context of measures for protection, is not yet included in the legislative framework, but this has been added in the



Draft Law on Electronic Media (2023) currently under consultation (7 September to 7 October 2023). Regarding the obligation to effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS), the Law on Advertising allows for the development of a co-regulatory system with the REM. The provision speaks about developing rules regarding “inappropriate advertising” of HFSS food or beverages, which is broadcast before, during or immediately after program content intended for children. The provision should be updated in order to reflect the aim of the Directive to “effectively reduce exposure of minors” to such advertising.

Updates to the Law on advertising, which should incorporate all the provisions of the AVMS Directive related to advertising, are still under preparation (status 20 September 2023).

The REM also passed a bylaw – the Rulebook on the protection of the rights of minors in the field of media services - in 2015.³³³ In addition, the REM has published several reports on the protection of the rights of minors, the legal framework and examples from practice.³³⁴

Following the tragic school shootings in Serbia, there has been a heightened focus on the levels of violence on Serbian TV, described as being “a diet of women being beaten and threats issued at gunpoint”.³³⁵ Reality TV shows feature “infamous mobsters and war criminals as the stars”. Thousands of people have taken to the streets in protest to demand the banning of such programming. According to media reports, “protesters expressed anger at the ruling party over a culture of violence they say is spurred by government-controlled media outlets”.³³⁶

4.9.2.3. 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 Serbia.

³³³ And also guidelines on categorising and labelling content

<http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20zastiti%20prava%20maloletnika%20u%20oblasti%20pruzanja%20medijskih%20usluga.pdf>.

³³⁴ The Protection of the Rights of Minors, the legal framework and examples from practice.

<http://www.rem.rs/sr-lat/izvestaji-i-analize/izvestaji-i-analize-o-nadzoru-emitera/analize>.

Media regulatory bodies and minors protection (Report)

<http://www.rem.rs/uploads/files/Baners/Medijska%20regulatorna%20tela%20i%20zastita%20maloletnika.pdf>.

³³⁵ France 24 (May 12, 2023): ‘I want it banned’: reality TV targeted in Serbia after shootings

<https://www.france24.com/en/live-news/20230512-i-want-it-banned-reality-tv-targeted-in-serbia-after-shootings>

³³⁶ Politico (June 4, 2023): Thousands protest ‘culture of violence’ in Serbia.

<https://www.politico.eu/article/serbia-culture-of-violence-protests/>



Table 146. Accessibility

AVMSD and accessibility of audiovisual media services	In line with AVMSD	References
<p>Ensuring - without undue delay - that services provided by AVMS providers are made continuously and progressively more accessible</p>	<p>Yes - aligned with the 2010 AVMSD, as it is closer to the requirement to “encourage” audiovisual media service providers to provide accessible content. The NRA should promote improved access to media services for persons with disabilities (Article 22, paragraph 20); Media service providers shall, make their programmes and their content accessible to people with disabilities. The Regulator shall urge media service providers to achieve this (Article 52). *** The Law on Public Service Broadcasting (Article 7) includes obligations for the PSB, covering non-discrimination (paragraph 5). *** Article 12 of the Law on Public Information provides for the right to information of persons with disabilities. *** The REM recommendation suggests proportions of, and types of, content that should be made accessible by public broadcasters, national private broadcasters and local and regional media. *** Yes – closely aligned with the 2018 AVMSD in the Draft Law Article 73, para 1 obliges media service providers to “work continuously” to make programmes accessible. The phrase “ensuring - without undue delay” is not reflected in the draft law.</p>	<p>Law on Electronic Media (2014), Article 22, paragraph 20, Article 52 *** Law on Public Service Broadcasting addresses Article 7 (5) *** Law on Public Information and Media, Article 12 *** (Non-binding) Recommendation on better accessibility of programme content to persons with disabilities *** Draft Law on Electronic Media, Article 73</p>
<p>AVMS providers should report on this to the NRAs. AVMS providers are encouraged to develop action plans in this area and should share with the NRA</p>	<p>Article 52 provides for communication between the regulator and media service providers, in the context of the regulator urging media service providers to make their content available to persons. *** Yes – closely aligned with the 2018 AVMSD in the Draft Law Under Article 73, there is an obligation to report annually to the Regulatory Authority. There is no mention of developing action plans.</p>	<p>Law on Electronic Media Article 52, paragraph 2 related to paragraph 1 *** Draft Law on Electronic Media, Article 73</p>
<p>States should provide a public online point of contact for providing information and receiving complaints</p>	<p>Not mentioned *** Yes – aligned with the 2018 AVMSD in the Draft Law Under Article 73, the Regulatory Authority shall be the point of contact.</p>	<p>*** Draft Law on Electronic Media, Article 73</p>
<p>Emergency information should be in accessible formats</p>	<p>There is a general obligation for media service providers to transmit communications of public authorities of an urgent nature, but no mention of accessible formats.</p>	<p>Law on Electronic Media Article 47, paragraph 1(2)</p>



	<p>***</p> <p>Media service providers are recommended to make all announcements by public authorities of an urgent nature related to threats to life, health, safety or property accessible to the deaf through open captions or sign language.</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD in the Draft Law Under Article 73</p> <p>“A media service provider shall in particular ensure that urgent information of importance to life and health is made available to the persons referred to in paragraph 1 hereof.”</p>	<p>***</p> <p>REM - Recommendation on better accessibility of program content to persons with disabilities. (Non-binding)</p> <p>***</p> <p>Draft Law on Electronic Media, Article 73</p>
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Source: Response of national expert of Serbia to European Audiovisual Observatory standardised survey

As can be seen from the table, the current media legislation in force is closer to the requirements of the 2010 AVMS Directive. In 2015, the Serbian Regulatory Authority of Electronic Media (REM) issued a Recommendation on the use of subtitles and sign language in order to improve the provision of audiovisual media content and their accessibility to people with hearing impairments.³³⁷ This recommendation defines how subtitles and sign language will be used. Following this, in 2019, the REM issued a Recommendation on better accessibility of program content to persons with disabilities.³³⁸ The initial plan was to draft a rulebook, which would be binding for the media service providers (MSPs) and which would enable better accessibility of media content to people with disabilities. However, the Ministry of Culture and Information issued an opinion that, according to the Law on Electronic Media, the REM does not have the authority to determine the obligations of a media service provider through a bylaw in this case. So instead the REM decided to adopt a Recommendation, which is not binding on media service providers.³³⁹

The Government of the Republic of Serbia’s Strategy for the Development of the Public Information System in the Republic of Serbia for the period 2020-2025 (discussed above) envisages taking the following measures: making an analysis of how much media content is accessible to people with disabilities; amending the Law on Public Information and Media, which will prescribe clear obligations of media publishers in order to increase the accessibility of the content for persons with disabilities; ensuring the sustainability of media intended for persons with disabilities through fiscal measures; introducing media

³³⁷ REM (2015): Recommendation on the use of subtitles and sign language in order to improve the provision of audiovisual media content and their accessibility to people with hearing impairments
<http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Preporuka%20%D0%BE%20nacinu%20koriscenja%20titlova%20i%20znakovnog%20jezika.pdf>.

³³⁸ REM (2019): Recommendation on better accessibility of program content to persons with disabilities
<http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Preporuka%20o%20vecoj%20dostupnosti%20programskih%20sadržaja%20osobama%20sa%20invalidetom.pdf>.

³³⁹ JUFREX (2020): TECHNICAL PAPER On Advice for the Serbian regulator aimed at improving the existing “Recommendation on accessibility of media content for people with disabilities”. Prepared by Deirdre Kevin, Council of Europe Expert.



content for persons with disabilities, with a special focus on the accessibility of media content that respects the gender specifics of persons with disabilities; developing a project for co-financing of media content to encourage the visibility of persons with disabilities in all media.

Research³⁴⁰ has shown that there are no systematic editorial policies regarding the target group of people with disabilities within the leading television channels with national coverage, or in the public service channels (which have a very clear obligation in this regard), or on news portals. Informative news shows may be accessible but it is very rare in the case of educational or entertainment, or children’s content. There are few media services (mainly public services) that have specialized shows for people with disabilities. This research recommended that: educational and entertainment programmes should also be made accessible to people with disabilities; amendments to the Law on Public Information and Media should include clear obligations for the media to increase the accessibility of content for people with disabilities; amendments to the Law on Electronic Media, should include obligations for electronic media to ensure the accessibility of media content; and the Recommendation of the REM on greater accessibility of content to persons with disabilities and the way to use subtitles and sign language should be made binding.

The Draft Law on Electronic Media (2023), published on 7 September 2023, strengthens the obligations of audiovisual media services in line with the Directive regarding accessibility. Services must report annually regarding their progress to the national regulatory authority.

4.9.2.4. 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 AVMS Directive requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The table below looks at the legislative framework in Serbia regarding these provisions.

Table 147. 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	Yes - aligned with 2018 AVMSD All media outlets must provide a range of data to a public register (Media Register). (Articles 7, 38). Media outlets must display basic information in the form of an imprint, imprint summary or identification (Articles 34 and 35).	Law on Public Information and Media Section: Public Availability of Information about the Media Articles 7, 34, 35, 38 *** Law on Electronic Media

³⁴⁰ Research of Novi Sad Journalist School in Serbian: <https://novinarska-skola.org.rs/sr/publication/izvestaj-o-pristupacnosti-medijskih-sadrzaja-i-izvestavanju-medija-o-osi-u-2021-godini/>.



jurisdiction over it and the competent NRA	<p>***</p> <p>Article 86 of the Law on Electronic Media deals specifically with the Register of Media Services to be kept by the Regulator. The equivalent provision is under Article 97 of the Draft Law on Electronic Media (2023).</p>	<p>Article 86 - Register of Media Services</p> <p>Draft Law on Electronic Media (2023), Article 97</p>
Possibility to also require AVMS providers to make accessible information on their ownership structures	<p>Yes – the content of the general Media Register should also include information about the natural and legal persons who directly or indirectly have more than 5 % share in the media outlet, the information about associated persons, and the information about other media outlets in which these persons have more than 5 % share (Article 39, paragraph 8).</p> <p>***</p> <p>The Register of Media Services kept by the Regulator also includes the ownership structure of audiovisual media service providers.</p> <p>***</p> <p>Draft Law on Electronic Media (2023), Article 93 requires ownership information in applications for licences.</p>	<p>Law on Public Information and Media</p> <p>Article 39, paragraph 8</p> <p>***</p> <p>Law on Electronic Media</p> <p>Article 86 - Register of Media Services</p> <p>***</p> <p>Draft Law on Electronic Media (2023), Article 93</p>
Requirement for states to establish and maintain up-to-date lists of the national AVMS service providers	<p>Yes – aligned with the 2018 AVMSD</p> <p>A Media Register is kept by the Serbian Business Registers Agency to provide publicly available information on the media.</p> <p>***</p> <p>In addition, the NRA maintains the Register of Media services and keeps record of on-demand audiovisual media service providers (Article 22, paragraph 7). The equivalent provision in the Draft Law on Electronic Media (2023) is Article 97</p>	<p>Law on Public Information and Media</p> <p>Articles 7, 37, 38, 39</p> <p>***</p> <p>Law on Electronic Media (2014)</p> <p>Article 22 (7)</p> <p>Draft Law on Electronic Media (2023), Article 97</p>

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

The rules regarding transparency of media ownership are quite detailed in the Serbian legislation. An official public Media Register is managed by the Business registers Agency. This includes information on the ownership structure. Media outlets are obliged to publish all the relevant details (as outlined in the Directive), including information about the responsible regulatory and/or supervision bodies and the registration number of the media outlet. In addition, the NRA maintains a Register of Media services and keeps record of on-demand audiovisual media service providers. The law also includes general provisions on the protection of media pluralism, under Article 6 “Protection of Media Pluralism and Ban on Monopoly in the Public Information Sector”. The article sets out the ways in which pluralism is violated, and provides for provisions relating to the reporting of changes in the ownership structure. Article 7 requires publication of data on media outlets, while Article



45 prohibits the violation of media pluralism.³⁴¹ Despite these comprehensive rules, there are still cases where it is difficult to assess the actual ownership of media outlets. Regarding several media outlets, there is doubt about the stated ownership.³⁴² As noted above, a recent Freedom House Report claimed that media freedom is undermined by a lack of transparency in media ownership, and the presence of politically connected media owners.³⁴³

4.9.3. 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 148. Promotion of European works on linear services

AVMSD and the promotion of European works (linear services) (Articles 16 and 17)	In line with AVMSD	Reference
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 Linear services are required to ensure that more than 50% of broadcasting time is dedicated to European works. There is an option to do this progressively.	Law on electronic Media (2014), Article 65 and Draft Law on Electronic Media (2023), Article 77
Exceptions to this rule	Yes – aligned with the 2018 AVMSD Does not apply to local television broadcasters who are not connected to the national network. This is not the same in the Draft Law – exceptions listed: news shows, broadcasts of sports events, programmes dedicated to prize contests, advertising, teleshopping or teletext services.	Law on electronic Media 2014, Article 65 Draft Law on Electronic Media (2023), Article 77
Rules where a minimum percentage of content (for example 10%) of content broadcast (or of programme budgets) should be European works created by producers who are independent of broadcasters	Yes - aligned with the 2010 and 2018 AVMSD under the Law on Electronic Media. Further regulated via the Rulebook	Law on electronic Media 2014, Article 66 Equivalent provision in Draft Law is Article 79 *** Rulebook on criteria and manner of increasing audiovisual

³⁴¹ <https://www.kultura.gov.rs/extfile/sr/5067/law-on-electronic-media.doc>.

³⁴² Media Ownership Monitor: Serbia 2017. <http://serbia.mom-gmr.org/en/>.

³⁴³ Freedom House Report (2022): Serbia <https://freedomhouse.org/country/serbia/freedom-world/2022>.



		European works, Article 6, paragraphs 1 and 2 ³⁴⁴
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Source: Response of national expert of Serbia to European Audiovisual Observatory standardised survey

From the above, according to the information provided in the European Audiovisual Observatory's survey it can be seen that the obligations for linear audiovisual media services with regard to the promotion of European works are aligned with the AVMS Directive. Linear services are required to ensure that more than 50% of broadcasting time is dedicated to European works. In addition, they are required to report to the REM on how they achieve this. According to the annual reports of the REM, the implementation of the current obligations is successful.³⁴⁵ These are further regulated via a specific Rulebook on criteria and manner of increasing audiovisual European works (Article 4), further explains the obligations of media broadcasters in this area.

Table 149. 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 audiovisual media services are obliged to promote production of and access to European works. This can be achieved via financial contribution or by prominence of European audiovisual works in the catalogue of programmes from on-demand services. Media Service providers are obliged to provide the Regulatory body upon request data providing proof for those facts (Article 62). *** Yes – aligned with the 2018 AVMSD in the Draft Law	Law on electronic Media (2014), Article 62 *** Draft Law on Electronic Media (2023), Article 77
Exemptions for AVMS providers with a low turnover or a low audience?	Yes – aligned with the 2018 AVMSD in the Draft Law The provisions of this Article shall not apply to providers of on-demand media services classified as micro legal entities, nor shall they apply when it is impossible or unreasonable to apply the obligation given the nature of the on-demand media service.	Draft Law on Electronic Media (2023), Article 77

³⁴⁴ Rulebook on criteria and manner of increasing audiovisual European works, <http://www.rem.rs/uploads/files/Podzakonska%20regulativa/Pravilnik%20o%20kriterijumima%20i%20na%C4%8Dinu%20pove%C4%87anja%20udela%20evropskih%20audio-vizuelnih%20dela.pdf>.

³⁴⁵ <http://www.rem.rs/sr-lat/izvestaji-i-analize/izvestaji-o-radu>.



Reference to European Commission guidelines regarding a) the calculation of the share of European works, and b) the definitions of low audience and low turnover of services?	Not mentioned	
Inclusion of any financial contribution obligations for services targeting the country?	Not mentioned	

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

Regarding on-demand audiovisual media services, the law will have to be adapted to address changes in the Directive. On-demand audiovisual media services are obliged to promote production of and access to European works, with new quotas in relation to this (30% of content) and provisions on prominence. The Draft Law on Electronic Media (2023), published for public consultation on 7 September 2023, updates the obligations of on-demand audiovisual media services regarding European Works.

4.9.4. 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 150. 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 Under the Law on Advertising: ACCs should be recognisable (Article 13). Surreptitious advertising is prohibited (Article 12). Under the Law on Electronic Media, a media service cannot not use subliminal techniques. (Article 48)	Law on Advertising Articles 12, 13 Law on Electronic Media Article 48
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 ACCs should not encourage discrimination on any basis (Article 8). ACCs should not encourage behaviour that endangers the health or safety of the recipient (Article 10). ACCs should not encourage or approve actions that are prohibited by regulations on environmental protection behaviour (Article 10, paragraph5).	Law on Advertising Articles 8 and 10
ACC for the prescription of medicinal products and medical treatment shall be prohibited	Yes – closely aligned with the 2018 AVMSD Article 37, paragraph 4 prohibits TV sales (in teleshopping) of medical products.	Law on Advertising Article 37 (4)



Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD Sponsorship of news and other informative content is prohibited, except for sports news and weather forecasts (Article 64). If children's and religious programme contents are sponsored, symbols from the sponsor are allowed only at the beginning and end of such contents (Article 65). Advertising of tobacco and tobacco products, including any display of a trademark or other mark of the manufacturer of these products, is prohibited (Article 50). This includes a ban on sponsorship. E-cigarettes and refills are also included (Article 53).	Law on Advertising Articles 50, 53, 64, 65
No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes	Yes – closely aligned with the 2018 AVMSD But there is no reference to religious programmes	Law on Advertising Article 28
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	Law on Advertising Article 29
Viewers shall be clearly informed of the existence of product placement in a programme	Yes – aligned with the 2018 AVMSD	Law on Advertising, Article 30
Limiting the proportion of television advertising spots/teleshopping spots: throughout the day?; or during particular time periods?	This is aligned with the 2010 AVMSD Within one full hour of broadcast program of commercial media service providers, TV advertising and TV sales cannot occupy more than 20% of the time. For public service broadcasters it is 10%. The 20% limitation remains within the hour of broadcast time, rather than wider periods introduced in the updated Directive.	Law on Advertising, Article 35
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Yes – aligned with the 2018 AVMSD	Law on Advertising, Article 36

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

According to the information provided in the European Audiovisual Observatory's survey, the Serbian legislative framework covering ACCs is closely aligned with the provisions of the 2018 AVMS Directive. The most important legislation in this area is the Law on Advertising, which has recently been amended (2019) (including for example a ban on the advertising of e-cigarettes). However, there is a need to further amend the Law on Advertising in order to align with the Directive.

For example, the Directive changes the proportion of advertising time. Rather than the previous 20% limitation within an hour, the 20% applies to the time periods 06.00 to 18:00 and 18:00 to 24:00.



The provision regarding development of co-regulation to address advertising of HFSS foods and the protection of minors, should be updated in order to reflect the aim of the Directive to “effectively reduce exposure of minors” to such advertising (see under 1.1.2.3 above).

In addition, the REM has developed a Rulebook on advertising and sponsorship in electronic media,³⁴⁶ which can be updated following the alignment of the legislation.

As noted above, as the current legislation does not yet include VSPs in its scope, the relevant rules for audiovisual commercial communications on VSPs are not yet incorporated in the law. The Draft Law on Electronic Media (2023), published for public consultation on 7 September 2023, introduces obligations for VSPs with regard to commercial communications (see next section). As noted above, updates to the Law on advertising, which should incorporate all the provisions of the AVMS Directive related to advertising, are still under preparation (status 20 September).

4.9.5. Provisions applicable to video-sharing platforms – VSPs

An important novelty of the 2018 AVMS Directive was expanding the scope to include VSPs. Provisions regarding VSPs are not yet incorporated into the national legislative framework in Serbia. However, the Draft Law on Electronic Media (2023), currently under consultation (September 2023) includes some of the relevant provisions, as outlined below.

Table 151. Obligations on video-sharing platforms regarding content

The AVMSD and provisions on VSPs (Article 28b)	In line with the AVMSD	References
Protecting minors from harmful content in programmes, user-generated videos and ACCs; protecting the general public from programmes, user-generated videos and ACCs containing incitement to violence or hatred as well as from criminal content – provocation to commit a terrorist offence; child pornography; racism and xenophobia.	Yes – aligned with the 2018 AVMSD in the Draft Law Article 115 (1, 2, and 3) outlines the obligations of VSPs regarding content.	Draft Law on Electronic Media (2023), Chapter VI Video-Sharing Platform Services Obligations Article 115
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others.	Yes – aligned with the 2018 AVMSD in the Draft Law Article 115 provides the general obligation that video-sharing platform service providers shall take appropriate measures so that	As above, Article 115

³⁴⁶ Rulebook on advertising and sponsorship in electronic media - "Official Gazette of RS", number 101 of 16 December 2016. <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/drugidrzavniorганиorganizacije/pravilnik/2016/101/1>.



	the user-generated videos, containing audiovisual commercial communications, comply with the provisions of the law regulating the field of advertising.	
VSPs should clearly inform users where programmes and user-generated videos contain ACC.	Yes – aligned with the 2018 AVMSD in the Draft Law	As above, Article 115
VSP should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS).	Not mentioned	

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

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

In the Draft Electronic Media Law (2023), no specific measures are addressed as this is intended to be further elaborated in a by-law or rulebook of the regulatory authority. Article 116 states that:

The Regulatory Authority shall detail the measures that video-sharing platform service providers are obliged to apply, considering the nature of the content in question, the damage it can cause, the characteristics and categories of persons to be protected, the rights and legitimate interests of all stakeholders, including video-sharing platform service providers, the users who generated the video content and public interest.

4.9.6. Concluding remarks and summary of findings

According to the information provided in the European Audiovisual Observatory's survey, the current legislative framework in Serbia is largely aligned with the 2010 AVMSD, and partly aligned with the 2018 AVMSD. An important element of the legislative framework is the Advertising Law updated in 2019, which covers several novelties of the 2018 AVMSD, but there remain several key areas that will need further updates. A Working Group was established by the Government in January 2023 in order to draft amendments to the Law on Electronic Media in order to align with the Directive.

In addition, a further Working Group was established in November 2022 to discuss potential amendments to the Law on Public Information and Media (2016), which deals (among other things) with freedom of public information and freedom of expression, the provisions on the Media Register, the roles of editors and journalists, media distribution, funding for public interest content, protection of media pluralism, the rights and obligations pertaining to public information, procedures of legal protection, supervision of the application of legal provisions and penal provisions.



The Government published a Strategy for development of the public information system in the Republic of Serbia for the period 2020-2025, the implementation of which has so far been significantly delayed. While this strategy has a main focus on broad issues in relation to the media and the need to update the Law on Public Information and Media, it also discusses the need to update audiovisual policy (as regulated under the Law on Electronic Media). In particular, several issues were raised regarding the need to strengthen capacities and independence of the national regulatory authority – the Regulatory Authority for Electronic Media (REM).

Concerns regarding the independence of the national regulatory authority, the REM have also been discussed with regard to the appointment of members of the Council, its financial independence, and its independence from political influence. The Strategy (mentioned above) includes the aims to introduce several important reforms regarding the REM. These issues have also been highlighted in the 2022 Report on Serbia of the European Commission, which strongly encourages Serbia to move forward with alignment of the national legislation with the EU *acquis*.

Draft legislation to update both laws has been prepared and was made available for public consultation between 7 September and 7 October 2023. As outlined above, the Draft Law addresses most of the changes in the AVMS Directive including some of the proposals in the Strategy with regard to the independence of the national regulatory authority. Further amendments to the Law on Advertising are (at the time of writing in September 2023) being prepared but not yet published. There remain some gaps in the legislation regarding relevant definitions provisions for ACCs and these should be addressed in the Law on Advertising.

The Draft Law on Electronic Media introduces the obligations for VSPs but does not address appropriate measures to be taken. This will be further elaborated in a secondary act of the NRA.

One additional observation concerns prohibited content. The law does not directly prohibit certain content and places this as an obligation of media service providers. It rather introduces an obligation for the NRA to ensure that prohibited content is not broadcast. According to European standards and general practice it is important that audiovisual media services have as part of their obligations the requirement to not disseminate illegal content. Obligations are articulated under Article 61, but this does not include an obligation on media service providers to refrain from the dissemination of illegal content. A prohibition on hate speech in all media is outlined in Article 87 of the Draft Law on Public Information and Media.

Likewise, Article 72 states that: “the Regulatory Authority shall ensure that the programme content of a media service provider does not contain information which overtly or covertly incites terrorism, the violent overthrow of the constitutional order, threats to national security or aggressive war, or glorifies or justifies such acts.” This is not outlined as a prohibition for the audiovisual media services but as an obligation of the NRA to ensure that programme content of a media service provider does not contain this.

The general principles and key values examined in this country report are all addressed in the national legislative framework. This Factsheet also looked at the new Draft Law on Public Information and Media but did not identify many changes that impact on the



information regarding general principles and key values already provided in earlier versions of the Factsheet.

One exception is the fact that the Draft Law on Public Information and Media (2023) introduces exemptions from responsibility under Article 88, whereby there is no breach of the prohibition of hate speech where the content is part of a journalistic text that has been published. The law does not appear to clarify that such an exemption would require a court proceeding to establish “intent” and “objectivity” in relation to the journalism article.

The legislation contains rules on transparency of media ownership but they are not systematically enforced. The European Audiovisual Observatory’s survey has provided an overview of the challenges with regard to freedom of expression in practice and also with regard to the safety of journalists, and the growing incidence of hate speech. The information outlined above also provides detail of the campaigns against media outlets that are critical of the Government.

In addition, following the tragic school shootings in Serbia there have been major public protests regarding the “culture of violence” in Serbia, including the excessive violence on television.

The list³⁴⁷ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

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

Table 152. Relevant documents, reports, opinions

Title	Main topics/ themes	Link if available
Bureau for Social Research (May 2023) Alternative Report on the work of Regulatory Authority for Electronic Media (REM)	Report on the work of the NRA	In Serbian: https://www.birodi.rs/birodi-dostavio-republickom-javnom-tuzilastvu-alternativni-izvestaj-o-radu-rem-ocekujemo-da-nadlezno-tuzilastvo-postupi-po-sluzbenoj-duznosti/
EU/ OSCE: (May 2023): Report on novelties in the 2018 revision of the Audiovisual Media Services Directive and proposed interventions into the Serbian Law on Electronic Media and the Law on Advertising	Guidance for Serbian authorities in aligning with AVMS Directive	In English https://www.osce.org/files/f/documents/a/1/539114.pdf
EC (2022): COMMISSION STAFF WORKING DOCUMENT Serbia 2022 Report.	EC report on Serbia’s progress towards membership	In English https://neighbourhood-

³⁴⁷ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



		enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf
ODIHR (2022): Republic of Serbia Presidential and Early Parliamentary Elections. 3 APRIL 2022. ODIHR Election Observation Mission. Final Report.	Election monitoring report	In English: https://www.osce.org/files/f/documents/0/0/524385_0.pdf
Human Rights Watch (2022): Report on Serbia 2021	Human Rights and Media Freedom	In English https://www.hrw.org/world-report/2022/country-chapters/serbia/kosovo
Freedom House Report (2022): Serbia	Freedom of the media	In English https://freedomhouse.org/country/serbia/freedom-world/2022
Reporters Without Borders (2022): Ten recommendations to newly elected officials for strengthening press freedom and trustworthiness of information.	Freedom of the media	In English https://rsf.org/en/news/serbia-rsfs-ten-recommendations-newly-elected-officials-strengthening-press-freedom-and
EC (2021): COMMISSION STAFF WORKING DOCUMENT Serbia 2021 Report	EC report on Serbia's progress towards membership	In English https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-10/Serbia-Report-2021.pdf
Safe Journalists Net (2021): SERBIA - Indicators on the level of media freedom and journalists' safety 2020. By Rade Djuric.	Safety of Journalists	In English https://nuns.rs/media/2021/08/SRB-ENG-2020.pdf
JUFREX (2020): Report on the use of Hate Speech in Serbian Media. By Ivana Krstić.	Hate speech	In English https://rm.coe.int/hf25-hate-speech-serbian-media-eng/1680a2278e
JUFREX (2020): TECHNICAL PAPER On Advice for the Serbian regulator aimed at improving the existing "Recommendation on accessibility of media content for people with disabilities". Prepared by: Deirdre Kevin, Council of Europe Expert	Accessibility of media services for people with disabilities	
Serbian Government (2020): STRATEGY - development of the public information system in the Republic of Serbia for the period 2020-2025. Year "Official Gazette of RS", number 11 of February 7, 2020. "Official Gazette of RS", number 11 of February 7, 2020.	Government strategy for the media	In Serbian https://www.pravno-informacionisistem.rs/SlGlasnikPortal/eli/reg/sgrs/vlada/strategija/2020/11/1/reg

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



4.9.8. Data compilation

This country report is based on information and materials supplied by the national expert Rade Djuric, a lawyer specialised in media, control of budget funds and fight against corruption, a member of the Standing Working Group for the Safety of Journalists and the Working Group for the Development of a Platform for Recording Attacks of Threats and Pressures and part of the lawyers and researchers teams of the Slavko Curuvija Foundation of the Independent Journalists Association in Serbia.



4.10. Tunisia (TN)³⁴⁸ (Country report A³⁴⁹)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- Following the 2011 revolution in Tunisia, two important laws were passed in relation to the media sector: the Decree-law n° 2011-115 which aimed to guarantee the freedom of the press, printing and publishing; and the Decree-law n° 2011-116, which enshrined the freedom of audiovisual communication and established the Higher Independent Authority of Audiovisual Communication (HAICA).
- However, there has been no major update of the legislative framework relevant to the media despite various initiatives in this area. The national regulatory authority – the HAICA – has facilitated the introduction of private broadcasting via several decisions, and the obligations on licence holders therein are the basis for several areas of regulation with regard to content, and also to transparency of ownership.
- Most of the general principles and key values are covered in the national framework – but there is a need for obligations in the area of accessibility for people with disabilities.

³⁴⁸ The country report on Tunisia incorporates the feedback received from Nouri Lajmi, former President of the Higher Independent Authority of Audiovisual Communication (HAICA), during the checking round with the national regulatory authorities.

³⁴⁹ Country report B outlines the findings of Questionnaire B in relation to Group II countries, which includes Tunisia.



- The HAICA has also developed several guides for the audiovisual media sector on hate speech, protection of minors, media coverage of terrorism, and media coverage of women.
- Tunisia has been in the midst of a political crisis since 2021, when President Kais Saied dismissed the Prime minister and suspended Parliament for 30 days. This was followed by the passing of a Constitutional referendum in July 2022 (with a 30.5% electoral turnout as there exists no minimum turnout requirement for referenda). The 2022 Constitution attributes significant powers to the President. While the freedom of expression is still guaranteed under Article 37, the national media regulatory authority has lost the Constitutional guarantees of its independence following the adoption of the 2022 Constitution, as detailed below. Parliamentary elections were held in December 2022 (first round) and January 2023 (second round) (with approximately 11% electoral turnout).
- Concerns have been raised in relation to freedom of expression, and to the use by the courts of penal laws rather than the relevant media legislation to deal with issues of defamation. Following an amendment of the penal law in September 2022 to introduce a criminal penalty for the dissemination of (among others) false news and rumours, harsher penalties have been introduced. Where such information concerns a public official, penalties are doubled. A further Decree-Law No. 8 dated 8 March 2023 removed the national media regulatory authority – the HAICA – from its joint role with the Election Authority the ISIE³⁵⁰ in the regulation of media during elections. Following the elections, independent media was barred from attending the first session of the new Parliament.
- There continue to be concerns regarding freedom of expression and the freedom of journalism in Tunisia according to news updates of the Council of Europe and statements of the UN High Commissioner for Human Rights, as further detailed below.

³⁵⁰ Instance Supérieure Indépendante pour les Elections (ISIE) (Independent High Authority for Elections)



- The list³⁵¹ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.10.1. Introduction

Tunisia, in the context of this research, is one of the European neighbourhood countries participating in Creative Europe 2014-2020 Programme and included partially in the Programme's MEDIA strand (Group II countries). Partial participation in the MEDIA and CROSS strands can be pursued only if there is compliance with general principles; or full participation in clusters 2 and 3 is possible, if tangible progress is made towards transposing the AVMS Directive - i.e. rules on linear services aligned and progress regarding alignment of rules on on-demand services; or full participation in all actions in MEDIA and CROSS is possible if there is full alignment with the AVMS Directive. The EU and Tunisia signed an Association Agreement in 1995. In a joint press release on EU-Tunisia relations from June 2021, both sides reaffirmed their commitment to work together to promote the cultural and cultural heritage sector.³⁵²

Tunisia has been in the midst of a political transition since July 2021, when President Kais Saied froze and eventually suspended the Tunisian Parliament, in a move supposedly designed to tackle corruption and general dissatisfaction with political elites.³⁵³ On 13 December 2021, the President announced that Tunisia would hold a Constitutional referendum in July 2022.³⁵⁴ The referendum in July was passed (with a 30.5% electoral turnout as there exists no minimum turnout requirement for referenda). Under the 2022 Constitution, the Government will answer to the President and not to Parliament. The President can present draft laws, and has sole responsibility for proposing treaties and drafting state budgets, appointing or sacking Government ministers and appointing judges (based on recommendations of a relevant Commission). A President could serve two terms of five years each, but extend this if it is considered that there is an imminent danger to the state. The President would have the right to dissolve Parliament while no clause would allow for the removal of a President. The 2022 Constitution retains the former rights and liberties, including freedom of speech, the right to organise in unions and the right to peaceful gatherings.³⁵⁵

³⁵¹ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

³⁵² European Commission (2021): Joint Communiqué on EU-Tunisia relations: "For a renewed partnership" https://ec.europa.eu/commission/presscorner/detail/en/statement_21_2845.

³⁵³ European Parliament – Think Tank (29.03.2022): Tunisia: Political situation ahead of the constitutional referendum. [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2022\)729346](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2022)729346).

³⁵⁴ *Ibid.*

³⁵⁵ Reuters (30 June 2022): Tunisian president takes most powers in proposed constitution, <https://www.reuters.com/article/us-tunisia-politics-idAFKBN20B26J>.



In the December 2022 parliamentary elections and the second round of voting in January 2023, just over 10% of the electorate turned out to vote. The main political parties and civil society groups boycotted the vote, including . Ennahda (Renaissance), previously the biggest in Tunisia's parliament.. The reasoning was that the powers of the Parliament had already been diminished as a result of changes undertaken by the President of Tunisia.³⁵⁶ Several Decrees have been passed which impact on the freedom of the media and the work of the national media regulatory authority, the HAICA, which will be discussed further below.

4.10.1.1. 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 country report. It is important to note that this country report does not outline the national rules relevant to the entire AVMS Directive, but rather focuses 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 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).

There are few English versions of the texts available online but some French versions have been provided.

Table 153. Legal framework

Title	Status	Relevance	Link
<p>The Constitution of 25 July (hereinafter the "2022 Constitution")</p> <p>Décret Présidentiel n° 2022-691 du 17 août 2022, portant promulgation de la Constitution de la République tunisienne (French)</p> <p>2022 أوت 17 في مؤرخ 2022 لسنة 691 عدد رئاسي أمر (Arabic) وإصداره التونسية الجمهورية دستور بختم يتعلق</p>	In force	Fundamental freedoms and rights	<p>In French</p> <p>https://s3-eu-west-1.amazonaws.com/public.lidit.dcaf/public/Constitution%20de%20la%20R%C3%A9publique%20Tunisienne%20du%2025%20juillet%202022.pdf</p> <p>In Arabic</p> <p>https://s3-eu-west-1.amazonaws.com/public.lidit.dcaf/public/%D8%A3%D9%85%D8%B1%20</p>

³⁵⁶ DW (01/ 31/ 2023): After Tunisia's 'ghost election,' what comes next?
<https://www.dw.com/en/after-tunisia-ghost-election-what-comes-next/a-64570028>



			%D8%B1%D8%A6%D8%A7%D8%B3%D9%8A%20%D8%B9%D8%AF%D8%AF%20691%20%D9%84%D8%B3%D9%86%D8%A9%202022%20%D9%85%D8%A4%D8%B1%D8%AE%20%D9%81%D9%8A%2017%20%D8%A3%D9%88%D8%AA%202022.pdf
Decree-law n° 2011-115 dated 2 November 2011, relating to the freedom of the press, printing and publishing. (81 articles) (hereinafter Decree-law n° 2011-115 on freedom of the press, printing and publishing) Décret-loi n° 2011-115 du 2 novembre 2011, relatif à la liberté de la presse, de l'impression et de l'édition (French) يتعلق بحرية الصحافة والطباعة والنشر مرسوم عدد 115 لسنة 2011 مؤرخ في 2 نوفمبر 2011 (Arabic)	In force	Freedom of the press	In French https://haica.tn/fr/decret-loi-n2011-115-du-2-novembre-2011/
Decree-law n° 2011-116 dated 2 November 2011, relating to the freedom of the audiovisual communication and establishing a Higher Independent Authority of Audiovisual Communication. (hereinafter Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA) Décret-loi N° 2011-116 du 2 novembre 2011, relatif à la liberté de la communication audiovisuelle et portant création d'une Haute Autorité Indépendante de la Communication Audiovisuelle (HAICA) (French) عليا مستقلة للاتصال السمعي والبصري يتعلق بحرية الاتصال السمعي والبصري وبإحداث هيئة مرسوم عدد 116 لسنة 2011 مؤرخ في 2 نوفمبر 2011 (Arabic)	In force	Main law that regulates the audiovisual media	In French http://www.inric.tn/fr/decret.pdf
Telecommunications Code issued by law n°2001-1 on 15 January 2001 (92 articles) Code des telecommunications et ses textes d'application 2016 (French) مجلة الاتصالات (Arabic)	In force	Telecommunications	In French https://tunisia.mom-rsf.org/fileadmin/Editorial/Tunesia/Laws/code_des_telecommunications.pdf



Decree-Law No. 2022-54 of 13 September 2022, on the fight against crimes relating to information and communication systems, (IORT No. 103, 16 September 2022) Décret-loi n° 2022-54 du 13 septembre 2022, relatif à la lutte contre les infractions se rapportant aux systèmes d'information et de communication (French) مرسوم عدد 54 لسنة 2022 مؤرخ في 13 سبتمبر 2022 يتعلق بمكافحة الجرائم المتصلة بأنظمة المعلومات والاتصال (Arabic)	In force	Fight against fake news and disinformation (a.o.)	In French https://legislation-securite.tn/fr/law/105348 In Arabic https://legislation-securite.tn/ar/law/105348
Draft Legislation			
Draft Law on Audiovisual Communication (2020) (100 articles) مشروع قانون أساسي متعلق بحرية الاتصال السمعي البصري وبتنظيم هيئة الاتصال السمعي البصري وضبط اختصاصاتها. (Arabic)	In consultation	Draft Law to update the audiovisual media regulation	In Arabic – not online
Draft Law on freedom of expression, press, printing and publishing (2018) (71 articles) مشروع قانون أساسي متعلق بحرية التعبير والصحافة والطباعة والنشر (Arabic)	2018 Stalled	Draft Law to update the Law on Freedom of the press, printing and publishing	In Arabic – not online ³⁵⁷
Draft Digital Communications Code (304 articles) مشروع المجلة الرقمية (Arabic)	In consultation	Electronic communications/ Telecommunications	In Arabic – not online ³⁵⁸
Secondary legislation: bylaws, codes etc in force			
Law n° 58-2017 on the elimination of all forms of violence against women. (44 articles) Loi organique n° 2017-58 du 11 août 2017, relative à l'élimination de la violence à l'égard des femmes (French)	In force	Elimination of violence against women	In French https://legislation-securite.tn/fr/law/56326
Law n° 50-2018 on the elimination of all forms of racial discriminations. (11 articles) Loi organique n° 2018-50 du 23 octobre 2018, relative à l'élimination de toutes les formes de discrimination raciale (French) أكتوبر 23 في مؤرخ 2018 لسنة 50 عدد أساسي قانون 2018 العنصري التمييز أشكال جميع على بالقضاء يتعلق	In force	Equality and non-discrimination	In French https://legislation-securite.tn/fr/law/104416

³⁵⁷ A summary of the work of the group of experts who wrote the draft law (in Arabic): <https://www.article19.org/wp-content/uploads/2021/04/rapport.pdf>.

³⁵⁸ Analysis of the Draft Law by Article 19: <https://www.article19.org/wp-content/uploads/2020/12/Tunisia-Digital-Communications-Code-Legal-analysis-14-May-2020-3-1.pdf>.



(Arabic)			
<p>Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules</p> <p>Décision n° 2018-1 du 15 février 2018, relative aux règles de conduite pour la publicité dans les médias audiovisuels</p> <p>قرار عدد 1 لسنة 2018 المؤرخ في 15 فيفري 2018 المتعلق بالقواعد السلوكية للإشهار في وسائل الاتصال السمعي والبصري</p> <p>(Arabic)</p>	In force	Rules on advertising	<p>Available only in Arabic</p> <p>https://legislation-securite.tn/ar/law/56859#:~:text=%D9%8A%D9%85%D9%86%D8%B9%20%D8%A7%D9%84%D8%A5%D8%B4%D9%87%D8%A7%D8%B1%20%D9%85%D9%87%D9%85%D8%A7%20%D9%83%D8%A7%D9%86%20%D8%B4%D9%83%D9%84%D9%87,%D9%8A%D9%85%D9%86%D8%B9%20%D8%A7%D9%84%D8%A5%D8%B4%D9%87%D8%A7%D8%B1%20%D8%A7%D9%84%D9%83%D8%A7%D8%B0%D8%A8%20%D8%A7%D9%84%D9%85%D8%AA%D8%B6%D9%85%D9%86%20%D9%84%D9%85%D8%BA%D8%A7%D9%84%D8%B7%D8%A7%D8%AA</p>
<p>Decision of the Higher Independent Authority of Audiovisual Communication n° 2 of the year 2014, dated 5 March 2014, relating to the publication of the specifications fixing the conditions of granting a licence of creation and exploitation of a private television channel on the Tunisian territory. (hereinafter Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a licence of creation and exploitation of a private television channel)</p> <p>صالح المستقلة العليا الهيئة قرار في المؤرخ 0202 لسنة 20 عدد والبصري السمعى للاث مارس 5 اجازة على للحصول الشروط كراس بإصدار والمتعل 0202 خاصة تلفزية قناة واستغلال إحداث التونسية بالجمهورية</p> <p>(Arabic)</p>	In force	Rules and obligations for private television	<p>Available only in Arabic</p> <p>https://haica.tn/wp-content/uploads/2020/02/cahier-des-charges-tv-privee.pdf</p>

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



Following the 2011 revolution in Tunisia (the “Jasmine Revolution”) new institutions were created in Tunisia and a range of new legislation was adopted. This included: the Decree-law n° 2011-115 dated 2 November 2011, relating to the freedom of the press, printing and publishing; and the Decree-law n° 2011-116 dated 2 November 2011, relating to the freedom of the audiovisual communication and establishing a High Independent Authority of Audiovisual Communication (*Haute Autorité Indépendante de la Communication Audiovisuelle*, HAICA). These remain the main legislative documents in the regulation of the media sector. In 2014, the Constitution of Tunisia was adopted establishing fundamental rights and freedoms.³⁵⁹ As noted above, the new 2022 Constitution retains the former rights and liberties, including freedom of speech, the right to organise in unions and the right to peaceful gatherings.³⁶⁰

The Decree-law n° 2011-116 established the NRA – the High Independent Authority of Audiovisual Communication (HAICA). Several decisions of the NRA from 2014, which relate to the development of private broadcasting are also relevant in the regulation of audiovisual media services (in particular, the Decision Communication n° 2 of the year 2014, dated 5 March 2014, which covers conditions for licences for private television). There are three other similar decisions (not included above) that cover obligations for licence holders, for private radio channels, associative (community) radio channels, and associative (community) television channels.

In 2018, a Decision of the HAICA (n° 2018-1 on 15 February 2018) introduced rules on advertising in audiovisual media services. Since 2015, there have been some initiatives on the part of the government to renew the legal framework but these never materialised due to the strong opposition from various stakeholders. The problems cited by stakeholders related to the incompatibility of the drafts with international standards related to freedom of media. For example, in 2017, professional organisations, civil society and Article 19³⁶¹ together drafted a statement critical of a draft law on the creation of the Audiovisual Communication body. This body was intended to replace the HAICA, but without a comprehensive vision of audiovisual reform being adopted. The signatories therefore called on the Government and the Assembly of Representatives to adopt a comprehensive Audiovisual Law in line with the 2014 Constitution and international standards, developed within the framework of a serious and continuous dialogue with the relevant organisations of civil society, professionals and independent experts in the media sector.³⁶²

A Draft Law on freedom of expression, press, printing and publishing (2018) was prepared by a group of civil society organisations led by the SNJT (*Syndicat National des Journalistes Tunisiens*/ National Union of Journalists of Tunisia) and presented to the

³⁵⁹ A useful overview of this is provided in the following report: European Union – MEDMEDIA (2015) Assessment of Media Legislation in Tunisia. Prepared by Ahmed Ghazali

https://www.menamedialaw.org/sites/default/files/library/material/medmedia_tunisia.pdf.

³⁶⁰ Reuters (June 30, 2022): Tunisian president takes most powers in proposed constitution

<https://www.reuters.com/article/us-tunisia-politics-idAFKBN2OB26J>.

³⁶¹ Founded in 1987, Article 19 is an international human rights organisation that works to defend and promote freedom of expression and freedom of information worldwide, <https://www.article19.org/>.

³⁶² Article 19 (June, 2017): Tunisia: Open letter on the draft law on the creation of the Audio-visual Communication body. <https://www.article19.org/resources/tunisia-open-letter-on-the-draft-law-on-the-creation-of-the-audio-visual-communication-body/>.



Minister of Human rights on 1st June 2018.³⁶³ To date, nothing further has happened regarding this law. A Draft Law on Audiovisual Communication (2020) was published in 2020 but was withdrawn by the Government in October 2020 in order to hold more consultations. A Draft Digital Communications Code (related to telecommunications and electronic communications) was also withdrawn by the Government in January 2020 in order to hold more consultations.

A conference was held on 20 December 2021 which involved various stakeholders and the HAICA, as part of the preparations for a national conference on public policies in the media sector. The participants discussed the issue of delayed reforms, the problem of overlap between traditional and new media, the issue of public advertising subject to clientelism and anarchy, the lack of a clear vision or consultative approach in the relationship between the state and the media. The participants noted that the sector is still governed by decrees from 2011 and the promises of political reform have not been fulfilled. For many actors, the *status quo* in the Tunisian media landscape is due in particular to the lack of will and involvement on the part of the authorities.³⁶⁴

4.10.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant current definitions with the AVMS Directive.

Table 154. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	<p>The current definition does not align with the AVMSD ***</p> <p>Yes – the proposed definition in the Draft Law on Audiovisual Communication aligns closely with the 2018 AVMSD.</p> <p>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</p>	<p>Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 2 (3)</p> <p>***</p> <p>Draft Law on Audiovisual</p>

³⁶³ The speech of the Minister for Relations with the constitutional authorities, civil society and human rights - Mr Mehdi Ben Gharbia on 1st June 2018 confirming the endorsement of the ministry of the draft law (<https://www.facebook.com/MRICSDH/videos/%D8%AD%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D8%AA%D8%B9%D8%A8%D9%8A%D8%B1-%D9%88%D8%A7%D9%84%D8%B5%D8%AD%D8%A7%D9%81%D8%A9-%D9%88%D8%A7%D9%84%D8%B7%D8%A8%D8%A7%D8%B9%D8%A9-%D9%88%D8%A7%D9%84%D9%86%D8%B4%D8%B1/2049926905262656/>).

³⁶⁴ Agence Ecofin (20 December 2021) : Tunisie : les structures représentatives et les acteurs des médias appellent à la réforme du secteur. <https://www.agenceecofin.com/regulation/2112-94081-tunisie-les-structures-representatives-et-les-acteurs-des-medias-appellent-a-la-reforme-du-secteur>



Definitions (Article 1 AVMSD)	In line with AVMSD	References
		Communication (2020) Article 2
Video-sharing platform (VSP) service	Not mentioned	
Programme	Yes - aligned in Draft Law with both 2010 AVMSD and 2018 AVMSD, if we assume that a “programme framework” can be equivalent to both a schedule and a catalogue.	Draft Law on Audiovisual Communication. Article 2, paragraph 15
User-generated video	Not mentioned A definition of “publisher of Content” is provided: Every person whose activity is to publish content on the Internet or on electronic communication networks.	
Editorial decision	Not mentioned	
Editorial responsibility	Not aligned with the AVMSD. The Draft Law provides a definition of “editorial line”: the sum of the rules and decisions that determine the identity of the audiovisual media establishment and its general orientations.	Draft Law on Audiovisual Communication. Article 2, paragraph 12
Media service provider	A different broader definition is provided. Audiovisual communication establishments: establishments that engage in production and broadcasting activities, such as public or private production and transmission establishments. (the current legislation) *** Audiovisual communication establishments: establishments that carry out the activity of broadcasting or transmitting audiovisual materials. It may engage in production activity or participate in it or assign others to produce for the purpose of broadcasting (proposed definition, Article 2)	Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA Article 2 (3) *** Draft Law on Audiovisual Communication. Article 2
VSP provider	Not mentioned	
Television broadcasting or television broadcast	A different broader definition is provided. The transmission of radio or television programmes and related data, with or without pay, by means of terrestrial link devices, wires, or satellites, or through the Internet or any other means directed to the public and receiving at the same time, whether through a receiver or other electronic equipment. It is not considered as broadcasting the internal communications of private organisations or government structures, such as internal television or radio, or communications via Intranets.	Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 2 (3) *** Draft Law on Audiovisual Communication. Article 2



Definitions (Article 1 AVMSD)	In line with AVMSD	References
	The same definition exists in the Draft Law on Audiovisual Communication.	
Broadcaster	Yes - aligned with the 2010 AVMSD Radio and television broadcasting services: electronic communication services that secure the transmission and broadcast of radio and television programmes via radio frequency.	Telecommunications Code issued by law n°2001-1 on 15 January 2001 Article 2
On-demand audiovisual media service	Not mentioned	
Audiovisual commercial communication (ACC)	Yes - aligned with the 2010 AVMSD as a broad definition Advertising: any communication operation intended for the public and for which it is reserved a pecuniary issue and which aims, directly or indirectly, to promote, sell or rent a product or a service, to defend an opinion or a cause or to exercise an influence desired by the author of the advertising. *** Yes - aligned with the 2018 AVMSD: All types of messages that aim to directly or indirectly promote goods or services or the image of a physical or moral person engaged in an economic activity, whether for financial consideration or otherwise. Commercial communication through an audiovisual communication service may take the form of advertising, sponsorship, product placement, screen-sharing advertising, screen shopping, advertising reporting, or the barter of programmes for advertising space.	Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 2 (3) *** Draft Law on Audiovisual Communication. Article 2
Television advertising	Part of the definition for ACC (above)	
Surreptitious ACC	Yes – aligned with the 2018 AVMSD in the Draft Law	Draft Law on Audiovisual Communication, Article 2
Sponsorship	Yes – aligned with the 2018 AVMSD Any contribution, in a financial or other form, by a public or private institution in financing audiovisual media services or programmes with the aim of promoting its name or brand or its image or activities.	Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules Article 1, paragraph 3
Teleshopping	Yes – aligned with the 2018 AVMSD A direct marketing process through television in the form of programmes aimed at the remote sale of products or services for a fee or otherwise.	As above Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules



Definitions (Article 1 AVMSD)	In line with AVMSD	References
		Article 1, paragraph 6
Product placement	Placing a product, services, or reference to such product, services, or a logo within a programme with or without pay.	As above Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules Article 1, paragraph 4
European works	Not mentioned	
Independent producer	Not mentioned	
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	<p>Audiovisual media services must respect human dignity (Article 5)</p> <p>***</p> <p>It is forbidden to broadcast any speech that incites discrimination, hatred or violence for racial, ethnic, moral, religious, sexual, regional or opinion-based reasons (Article 23). The holder of the licence is obligated not to infringe human dignity in any programme (Article 24).</p> <p>***</p> <p>Article 51 criminalises incitement to commit a crime of homicide, attack to the physical integrity of the man, of rape or of plundering. Where such incitement is followed by effect, the sentencing and punishment is more severe (Article 51).</p>	<p>Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 5</p> <p>***</p> <p>Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a licence of creation and exploitation of a private television channel,</p> <p>Articles 23, 24</p> <p>***</p> <p>Decree-law n° 2011-115 dated 2 November 2011, relating to the freedom of the press, printing and publishing.</p> <p>Article 51</p>
Definition of incitement to hatred (or equivalent)	<p>Audiovisual media services must respect human dignity (Article 5)</p> <p>***</p> <p>It is forbidden to broadcast any speech that incites discrimination, hatred or violence for racial, ethnic, moral, religious, sexual, regional or opinion-based reasons. (Article 23). The holder of the licence is obligated not to infringe on the dignity of the human person in any programme (Article 24).</p>	<p>Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 5</p> <p>***</p> <p>Decision of the HAICA n° 2, 2014 on specifications fixing</p>



Definitions (Article 1 AVMSD)	In line with AVMSD	References
	<p>***</p> <p>Incitement to hatred is also a criminal offence: publishing content inciting hatred between races, religions, or the populations and this by the incentive for discrimination and the use of hostile means, violence, or propaganda for ideas based on racial discrimination (Article 52).</p> <p>***</p> <p>The HAICA Guide defines hate speech: Hate speech is an intense and irrational emotion of opprobrium, enmity and detestation towards an individual or group, targeted because of their having certain protected characteristics (recognised under international law).³⁶⁵</p>	<p>the conditions of granting a license of creation and exploitation of a private television channel,</p> <p>Articles 23, 24</p> <p>***</p> <p>Decree-law n° 2011-115 dated 2 November 2011, relating to the freedom of the press, printing and publishing.</p> <p>Article 52</p> <p>***</p> <p>HAICA “Guide of good practice for the treatment of Hate Speech” for professionals working in the audiovisual media sector (2022).</p>

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

In summary, several of the current definitions are aligned with the 2010 and the 2018 AVMS Directive, while the Draft Law on Audiovisual Communication updates some of the definitions and brings them closer to alignment with the Directive (audiovisual media service, programme, etc). The media legislative framework addresses the issues of harmful content, and incitement to hatred, and the regulation of these issues are addressed in more detail below (under section 4.10.2 - general principles and key values).

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

The current national legislative framework (Decree-law n°116-2011) does not contain provisions regarding the criteria for establishment of the jurisdiction of audiovisual media services. However, the Draft Law on Audiovisual Communication under Article 3 establishes

³⁶⁵ The definition is based on the Camden principles: <https://www.article19.org/wp-content/uploads/2009/04/Camden-Principles-ENGLISH-web.pdf>; and the Rabat Plan: https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.



that the law applies to all audiovisual media services that: hold a licence in Tunisia; are based in Tunisia; produce more than 30% of their general programming in Tunisia.

This law also applies to foreign offices representing audiovisual communication establishments not residing in Tunisia. Neither the current legislation nor the draft laws introduce a procedure for establishment of jurisdiction of VSPs.

The Decree-law n°116-2011 guarantees in its Article 1 “the freedom of the audiovisual communication, organises the exercise of this freedom and establishes an independent authority of regulation of the audiovisual communication.” Also, under Article 3, it is provided that “the freedom of audiovisual communication is guaranteed, in accordance with the conventions and international pacts ratified by Tunisia and with the provisions of the Decree-law herein.”

It is important to distinguish between audiovisual media services which hold a licence from the NRA and audiovisual media services based in foreign states. Only the first are subject to the Tunisian law under a clear procedure.

In the Tunisian legislation, there are no specific provisions regarding a system of derogations. However, the Decree-law n°116-2011 stipulates in Article 5 that the exercise of the rights and freedoms mentioned in Articles 3 and 4 of the Decree-law is carried out on the basis of the following principles: respect of international conventions and pacts relating to the human rights and public freedoms; freedom of expression; equality; pluralism of expression of the ideas and opinions; and objectivity and transparency.

The application of these principles is subject to the rules relating to the respect of the rights of others or their reputation and notably: respect for the dignity of individual and private life; respect of the freedom of belief; the protection of the child; the protection of the national security and public order; the protection of the public health; and the encouragement of national culture and production.

Any audiovisual media service that holds a licence from the NRA might be sanctioned if it fails to follow rules regarding the protection of minors from harmful content; or content that presents a serious and grave risk of prejudice to public health; including the safeguarding of national security and defence. The NRA has the right to withdraw the licence. On the other hand there are no clear procedures regarding audiovisual media services based in foreign states.

4.10.2. 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 155. General principles and key values

General principle/ key value	Relevant provision/ provisions	References
Principle of non-discrimination	<p>Under Article 19 of the 2022 Constitution, “Public administration and all state services are available to the citizen on the basis of impartiality and equality. Any discrimination between citizens on the basis of any affiliation is an offense punishable by law.”</p> <p>Article 23 also provides that “Citizens are equal in rights and duties. They are equal before the law without any discrimination.”</p> <p>Article 51 addresses the protection and promotion of the rights of women, and guarantees of equal opportunity between men and women, enshrines a parity between men and women in elected assemblies, and provides that the state will take measures to eliminate violence against women.</p> <p>Article 52 addresses the rights of the child and the guarantee of protection without discrimination.</p> <p>Article 54 guarantees the protection of people with disabilities from discrimination. It also provides that the state will take all measures appropriate to guarantee their complete integration into society.</p> <p>***</p> <p>The NRA - HAICA - regulates the audiovisual sector according to the principles: (which include) development of a pluralistic audiovisual media landscape, diversified and balanced likely to respect the values of freedom, justice and exclusion of discrimination based on race, sex or religion.</p> <p>***</p> <p>In addition, there are two laws: one that deals specifically with the elimination of all forms of racism, and the other with the elimination of all forms of violence against women.</p>	<p>Constitution of 25 July (2022), Articles 19, 23, 51, 52, 54</p> <p>***</p> <p>Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 15</p> <p>***</p> <p>Law n° 58-2017 on the elimination of all forms of violence against women.</p> <p>Law n° 50-2018 on the elimination of all forms of racial discriminations.</p>
Prohibition of incitement to hatred and incitement to violence	<p>Calls or incitement to hatred between races, religions, or the population, including by incitement to discrimination and the use of hostile means, violence, or propaganda for ideas based on racial discrimination is a criminal offence punishable by fines and prison sentences (Article 52)</p>	<p>Decree-law n° 2011-115 on freedom of the press, printing and publishing, Article 52</p>
Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia, incitement to terrorism	<p>It is a crime to import, distribute, export, produce, publish, expose, sell child pornography (Article 60)</p>	<p>Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a licence of creation and exploitation of a private television channel</p>

Source: Response of national expert of Tunisia 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 almost completely dealt with in the legislative framework. The 2022 Constitution and the relevant media laws address these issues. In March 2022, the HAICA launched a “Guide of good practice for the treatment of hate speech” for professionals working in the audiovisual media sector.³⁶⁶ According to a representative of the HAICA, 13,93 % of the violations recorded by the HAICA services during the period from 2015 to 2022 fall under the register of speech inciting hatred and violence. The Guide is intended to help journalists and media professionals identify and deal with such discourse. The Guide outlines the ethical and legal responsibilities related to tackling hate speech. It provides good practices based on the HAICA decisions, and also from the European Court of Human Rights (ECtHR) decisions and other institutions. The HAICA has also introduced guidelines on media coverage of terrorism.³⁶⁷

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

The table below indicates the relevant legal framework for the protection of freedom of expression, which is enshrined in the 2022 Constitution of Tunisia, included in the Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, the Decree-law n° 2011-115, relating to the freedom of the press, printing and publishing, and in the Draft Laws intended to update these Decrees.

Table 156. Freedom of expression

General principle/ key value	Relevant provision/ provisions	References
Freedom of expression/ freedom of opinion/ freedom of information	Section 37: The freedoms of opinion, thought, expression, information and publication are guaranteed. No prior control can be exercised over these freedoms. Section 38: The State guarantees the right to information and the right of access to information. The State works to guarantee the right of access to communication networks.	Constitution of 25 July, Articles 37, 38
Freedom of expression/ freedom of the media/ access to information	Article 1 “The decree-law herein guarantees the freedom of the audiovisual communication, organises the exercise of this freedom and establishes an independent authority of regulation of the audiovisual communication.”	Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the

³⁶⁶ Tunisie Actu (29 March 2022): La HAICA lance un guide pour le traitement des discours de haine, <https://tunisie-actu.com/la-haica-lance-un-guide-pour-le-traitement-des-discours-de-haine/>.

³⁶⁷ HAICA Guidelines on Media coverage of terrorism (2016) (in Arabic), <https://haica.tn/wp-content/uploads/2022/03/Couverture-en-temps-de-crise-AR.pdf>.



General principle/ key value	Relevant provision/ provisions	References
	<p>Article 3 “The freedom of audiovisual communication is guaranteed, in accordance with the conventions and international pacts ratified by Tunisia and with the provisions of the decree-law herein.”</p> <p>Article 4 “Any citizen has the right of access to the information and the audiovisual communication.”</p>	HAICA, Articles 1, 3 and 4
Freedom of expression	<p>Article 1 ensures the right to the freedom of expression is guaranteed and exercised in accordance with the stipulations of the international pact on the civil and political rights, other treaties relating to it ratified by the Republic of Tunisia and with the provisions of the Decree-law herein.</p> <p>The article also stipulates the conditions for restriction of the right to freedom of expression, which can be restricted only under the terms of a text of legislative nature. Restrictions must pursue a legitimate aim such as the respect of the rights and dignity of others, the preservation of public order or the protection of the national defence and security. Restrictions shall be necessary in a democratic society and measures proportionate to achieve the legitimate aims.</p>	<p>Decree-law n° 2011-115 dated 2 November 2011, relating to the freedom of the press, printing and publishing.</p> <p>Article 1</p>
Freedom of expression/ freedom of the media	<p>Article 1 of the Draft Law guarantees the freedom of audiovisual communication and regulates its exercise.</p> <p>Article 4: Freedom of audiovisual communication is guaranteed in accordance with the provisions of the Constitution, international treaties and charters ratified by the Republic of Tunisia, and the provisions of the laws in force...</p> <p>...It is exercised on the basis of the principles of respect for human rights, public freedoms, freedom of expression, equality, pluralism, diversity, objectivity, transparency, and respect for the basic values of a democratic society and the civil republican system.</p>	<p>Draft Law on Audiovisual Communication</p> <p>Articles 1 and 4</p>
Freedom of expression/ freedom of the media	<p>Article 2 of the Draft Law guarantees the right to freedom of expression, press, printing and publishing, exercised in accordance with the provisions of the Constitution, the provisions of the International Covenant on Civil and Political Rights, the other international covenants ratified by the Republic of Tunisia, international human rights standards and the requirements of this Law.</p>	<p>Draft Law on freedom of expression, press, printing and publishing</p> <p>Article 2</p>

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

As outlined above, freedom of expression is guaranteed in the 2022 Constitution of Tunisia and in the current and draft media legislation. The provision in the previous Constitution that tasked the Audiovisual Communication Commission (a broad reference to the HAICA) with the responsibility for the regulation and development of the audiovisual communication sector and ensuring freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity (previous Constitution Article 127) has been removed.



According to the information provided in the European Audiovisual Observatory's survey, the protection of freedom of expression and freedom of media faces several obstacles. The precarious situation of audiovisual media companies and journalists has been used as a tool to control the editorial line of media outlets and to influence the public opinion. An example of this was the drafting of a law by the Government of Youssef Chahed in 2017 that aimed to weaken the NRA.³⁶⁸

In addition, several laws (Articles 67, 125, 128, 245 of the Penal Code, Article 86 of the Telecommunications Code, and Article 91 of the Military Code) are used by Tunisian courts to penalise/discipline media outlets or journalists. Instead of applying the press law, courts have a tendency to refer to other laws because they provide harsher sanctions (including imprisonment).³⁶⁹ Tunisian courts use the Penal Code or the Telecommunications Code instead of press law regarding freedom of media cases. According to the information provided in the European Audiovisual Observatory's survey, courts refuse to apply the Decree-law n°115-2011 related to freedom of press because it contains only fines as a sanction to defamation or disinformation.³⁷⁰ For example, Article 86 of the Telecommunications Code provides that "Any person who intentionally offends others or disturbs their comfort through public telecommunications networks shall be punished with imprisonment for a period ranging from one to two years and a fine of one hundred to one thousand dinars." This article has been used to prosecute journalists and bloggers who are communicating through audiovisual or online service.³⁷¹

Moreover, the independence of public media services is described as limited because of the interference of the Government and the HAICA has denounced such interference several times.³⁷² Also, the HAICA cannot control the reception of audiovisual media services via satellite (Nilesat or Arabsat) and broadcasting from other countries. These illegal channels (such as Zeitouna TV or Mostakilla) are considered as not respecting Tunisian rules regarding diversity and the respect of dignity. Several television services

³⁶⁸ Various analyses and discussions of this law were produced by Article 19: In French: <https://www.article19.org/fr/resources/tunisie-lettre-ouverte-sur-le-projet-de-loi-relatif-a-la-creation-de-linstance-de-la-communication-audiovisuelle/>.

In English: <https://www.article19.org/resources/tunisia-human-rights-organisations-call-on-tunisian-parliament-not-to-pass-amendment-to-law-on-freedom-of-audiovisual-communication/>.

³⁶⁹ See for example the following Article 19 articles: <https://www.article19.org/resources/tunisia-escalating-threats-to-media-freedom-journalists-prosecuted/> and <https://www.article19.org/resources/tunisia-imprisonment-of-journalist-and-writer-taoufik-ben-brik-should-be-reversed/>.

³⁷⁰ See for example, the discussion here: Association Tunisienne de défense des libertés individuelles (2021): Les Libertés au Prétoire ! - Les Juridictions Protectrices des Libertés Recueil de Commentaires de Décisions Juridictionnelles. Chapter: L'interprétation démocratique de la question de concurrence des lois en matière de la liberté d'expression, Dr. Aymen Zaghdoudi. https://tn.boell.org/sites/default/files/2022-04/3.%20Ouvrage%20les%20libert%C3%A9s%20au%20opr%C3%A9toire%20version%20en%20langue%20fran%C3%A7aise_2.pdf.

³⁷¹ <https://adlitn.org/download/la-liberte-dexpression-sur-internet-en-tunisie/>.

³⁷² See for example the following Article 19 articles: <https://www.article19.org/resources/tunisia-tunisian-and-foreign-ngos-welcome-withdrawal-of-controversial-nomination-of-director-of-tunisias-national-news-agency-and-support-tunisians-right-to-independent-public-media/> and <https://www.article19.org/resources/tunisia-where-poems-lead-to-prison/> and <https://www.article19.org/resources/tunisia-authorities-must-respect-the-independence-and-freedom-of-public-media/>.



were banned by Tunisian courts before they were even broadcast. The argument used by the judges concerned a fear that they would violate the secret of investigations and the presumption of innocence.³⁷³ According to the HAICA, such judicial decisions would not be in line with Article 31 of the 2022 Constitution, which provides that freedom of opinion, thought, expression, information and publication are guaranteed and that these freedoms are not subject to prior censorship.³⁷⁴

In addition, on 13 September 2022, the Tunisian Government issued Decree-law No. 54 of 2022 on the fight against crimes relating to information and communication systems,³⁷⁵ which introduced criminal sanctions regarding false news and rumours (a.o.). The provision of the law (unofficially translated) states that:

Article 24 Subsection 3 - Rumors and fake news

anyone who deliberately uses information and communication networks and systems to produce, promote, publish, transmit or prepare false news, statements, rumours or documents that are artificial, falsely attributed to others with the aim of attacking the rights of others, harming public security or national defense, or spreading terror among the population shall be punished by imprisonment for five years and a fine of 50 000 dinars (15 000 dollars).

The same penalties as those prescribed in the first paragraph shall be imposed on anyone who deliberately uses information systems to disseminate fabricated news, documents containing personal data or attribution of untrue matters with the aim of defaming others, discrediting or harming them materially or morally, or inciting to attack them or inciting hate speech.

The penalties prescribed shall be doubled if the targeted person is a public official or quasi-official.

³⁷³ See for example: <https://www.businessnews.com.tn/Tunisie--Interdiction-de-la-diffusion-de-l-%C4%80%E2%80%99interview-d%C4%80%E2%80%99Abou-lyadh-,520,36067,3>, and <https://www.leconomistemaghrebin.com/2019/03/15/interdiction-de-diffusion-deux-emissions-retour-case-depart/> and <https://tn24.tn/fr/amp/article/tunisie-la-justice-a-interdit-la-diffusion-de-l-episode-les-quatre-verites-traitant-du-meurtre-d-adem-boulifa-203989>.

³⁷⁴ Press release, 23 November 2019, of the HAICA regarding the banning of a TV programme. Available in Arabic: <https://haica.tn/ar/%D8%A8%D9%8A%D8%A7%D9%86-%D8%A7%D9%8A%D9%82%D8%A7%D9%81-%D8%A8%D8%AB-%D8%AC%D8%B2%D8%A1-%D9%85%D9%86-%D8%A8%D8%B1%D9%86%D8%A7%D9%85%D8%AC-%D8%A7%D9%84%D8%AD%D9%82%D8%A7%D8%A6%D9%82-%D8%A7/>.

See also O. Weslati (2021): The interference between the regulation and the judiciary, in: Legal Agenda, 7-1-2021, (in Arabic): <https://legal-agenda.com/%D8%AA%D8%AF%D8%A7%D8%AE%D9%84-%D9%88%D8%B8%D9%8A%D9%81%D8%A9-%D8%A7%D9%84%D8%AA%D8%B9%D8%AF%D9%8A%D9%84-%D9%85%D8%B9-%D9%88%D8%B8%D9%8A%D9%81%D8%A9-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1/>.

³⁷⁵ Decree-Law No. 2022-54 of 13 September 2022, on the fight against offences relating to information and communication systems, JORT No. 103, 16 September 2022, <https://legislation-securite.tn/fr/law/105348>.



Various civil society and international journalist organisations have expressed deep concern regarding the provisions of Article 24 and the impact on freedom of expression in Tunisia.³⁷⁶

Following the parliamentary elections (of December 2022 and January 2023) independent media was barred from attending and reporting on the opening session of the new Parliament. The HAICA denounced on 15 March 2023 the decision to bar the journalists from the opening of Parliament describing it as a dangerous indicator that reflects the real situation of freedom of the press in Tunisia.³⁷⁷

According to updates from the Council of Europe³⁷⁸ there have been a growing number of arrests of activists and journalists in Tunisia since the beginning of 2023.³⁷⁹ In May 2023, Tunisian journalist Khalifa Guesmi was sentenced to five years in prison in connection with legal proceedings under the anti-terrorism law. In addition, the aforementioned Decree-law No. 54 which introduced criminal sanctions regarding false news and rumours has been used to arrest and convict six journalists. In June 2023, the UN High Commissioner for Human Rights called on the authorities to stop restricting media freedoms and criminalizing independent journalism.³⁸⁰

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

The national regulatory authority (NRA) was established under the Decree-law n° 2011-116, which enshrined the freedom of audiovisual communication and established the Higher Independent Authority of Audiovisual Communication (HAICA). The HAICA is responsible for the regulation and development of the audiovisual communication sector and should ensure freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity. The HAICA has regulatory powers and must be consulted on draft laws in its areas of competence.

The legislative framework for the national regulatory authority - the HAICA - particularly its independence - has experienced significant changes following the adoption of the 2022 Constitution.

³⁷⁶ Reporters Without Borders (September 2022): Tunisian journalism threatened by decree criminalising “rumours and fake news”. <https://rsf.org/en/tunisian-journalism-threatened-decree-criminalising-rumours-and-fake-news>.

³⁷⁷ La HAICA dénonce la violation des dispositions constitutionnelles (articles 37 et 38 de la nouvelle Constitution): liberté de presse et droit à l'information. Communiqué: https://haica.tn/ar/%d8%a7%d9%84%d9%87%d9%8a%d8%a6%d8%a9-%d8%aa%d8%b1%d9%81%d8%b6-%d9%85%d9%86%d8%b9-%d8%a7%d9%84%d8%b5%d8%ad%d9%81%d9%8a%d9%8a%d9%86-%d9%85%d9%86-%d8%aa%d8%ba%d8%b7%d9%8a%d8%a9-%d8%a7%d9%84%d8%ac%d9%84/?fbclid=IwAR3afXj2uSuTxbiw-fLmK3SiNxETpUCOMnyWVj6VHvBEvkCn5p1D_JLUUhw&mibextid=Zxz2cZ

See also: <https://www.businessnews.com.tn/la-haica-denonce-les-ingerences-des-autorites-et-nomme-un-president-par-interim-520,127653,3>

³⁷⁸ In the context of the South Program V- Freedom of Expression, Pluralistic Media and Access to information

³⁷⁹ Confirmed also in recent statistics of the National Union of Journalists: Rapport annuel sur la réalité des libertés de la presse en Tunisie- 3 mai 2023 - Statistiques générales des attaques.

³⁸⁰ <https://www.ohchr.org/en/press-releases/2023/06/tunisia-crackdown-media-freedoms>



The previous Constitution under Article 125 stipulated the role of independent institutional bodies: independent constitutional bodies act in support of democracy; and all institutions of the state must facilitate their work. These bodies shall enjoy a legal personality and financial and administrative independence. This provision has been removed.

Also, Article 127 which focused on the role of an Audiovisual Communication Commission has been removed. This provided that for the role of the Commission, the need to consult the Commission regarding draft laws in its areas of competence, and also provisions regarding independence:

The Commission shall be composed of nine independent, neutral, competent, experienced members with integrity, who serve for one six-year term. One third of its members are replaced every two years.

The framework for the NRA now resides only in the Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA.

Table 157. Independence of National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government.	<p>Yes – mostly aligned with the 2018 AVMSD (see discussion below regarding the 2022 Constitution.</p> <p>***</p> <p>Article 6 established an independent public authority endowed with the civil personality and financial autonomy, whose headquarter is in Tunis. The HAICA is charged with guaranteeing the freedom and pluralism of the audiovisual communication, in accordance with the provisions of the Decree-law herein. The HAICA exercises its prerogatives in complete independence, without intervention of any part which is likely to influence its members or its activities.</p>	<p>***</p> <p>Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA, Article 6</p>
NRAs should exercise their powers impartially and transparently.	<p>Yes - aligned with the 2018 AVMSD</p> <p>Article 6 stipulates that the HAICA exercises its prerogatives in complete independence, without intervention of any part which is likely to influence its members or its activities.</p> <p>According to Article 8, the members of the HAICA exercise their duties in all independence and neutrality, and shall serve the general interest.</p> <p>Article 20 provides that the annual reports of HAICA are published and put online on the website of the authority.</p>	<p>As above, Articles 6, 8 and 20</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>Article 15 outlines the principles according to which the HAICA carries out its duties. Article 16 outlines in detail the responsibilities of the HAICA.</p> <p>Articles 17 and 18 relate to the coordination of work with the national agency for frequencies, in accordance with the national plan of the radio-electric frequencies and the national office of frequencies and remote transmission.</p> <p>Article 19 deals with the consultative role of the HAICA, including (among others) regarding the provision of opinions on draft laws, draft decree-laws or draft decrees or questions relating to the audiovisual communication sector, and making proposals regarding legal measures, and reforms of legislative and regulatory nature.</p>	<p>As above, Articles 15, 16, 17, 18, 19</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</p> <p>Article 23 - The HAICA has an autonomous budget, worked out by its president and adopted by the board.</p> <p>Article 26 - The HAICA is equipped with administrative departments including employees detached by public administrations and agents recruited in accordance with the status of the personnel of the authority, as fixed by the council of the HAICA and approved by decree.</p>	<p>As above, Articles 23 and 26</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 - aligned with the 2018 AVMSD</p> <p>Article 7 describes the composition of the HAICA and the requirements of the members in terms of professional experience, competence and integrity.</p> <p>The Article also describes the procedures for designation of members, the required professional experience of members, and the various parties involved in designating members (the President, representatives of the judicial system, organisations representing journalists; organisations representing non-journalistic audiovisual professions; organisations representing owners of information and communication enterprises.</p> <p>The Article also outlines compatibility issues in relation to the members – in relation to their links to political posts, political parties, or having financial interests in enterprises of information and communication.</p> <p>Article 8 provides that during the period of their mandate (six years), the members of the HAICA may not be removed or suspended of their duties, except in the specific cases and under a specific procedure outlined in the law: cases include absence without reason three successive times in the meetings of the HAICA; violation of the secrecy of the deliberations of the HAICA; violation of the prohibitions imposed on the members of the HAICA.</p>	<p>As above, Article 7 and 8</p>



Existence of effective and independent appeal mechanisms.	Yes – aligned with the 2018 AVMSD The decisions relating to the suspension or exclusion of the activities of a member of the HAICA are subjected to the control of the administrative court, in accordance with the procedures of litigation as regards abuse of power. Articles 32, 39 and 40 make reference to court procedures in relation to revoking of licences, or other sanctions.	As above Article 8, Articles 32, 39 and 40
Provisions in the law that support cooperation between NRAs.	N/A	

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

As outlined in the table above, most of the provisions in the current law with regard to the establishment, functioning and independence of the NRA are in line with the 2018 AVMS Directive and with European standards. However, as discussed above, the NRA has lost the Constitutional guarantees of its independence following the adoption of the 2022 Constitution.

While it retains the former rights and liberties, including freedom of speech, the right to organise in unions and the right to peaceful gatherings,³⁸¹ the provisions relating to the HAICA are not included in the 2022 Constitution, raising concerns that several constitutional guarantees enshrined in the 2014 Constitution might not be respected in the future.³⁸²

In addition, the provision in the previous Constitution that tasked the Audiovisual Communication Commission (a broad reference to the HAICA) with the responsibility for the regulation and development of the audiovisual communication sector and ensuring freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity (previous Constitution Article 127) has been removed.

Another issue concerns the appointment of the nine members of the NRA, where currently the members have to be elected by the two third of the members of Parliament. This condition makes the appointment an almost “impossible mission” as the Parliament (due to the system of proportional representation) is composed of a mosaic of small coalitions which make it hard to achieve this huge majority.³⁸³

³⁸¹ Reuters (30 June 2022): Tunisian president takes most powers in proposed constitution <https://www.reuters.com/article/us-tunisia-politics-idAFKBN2OB26J>.

³⁸² See the ARTICLE 19 press release of 5 July 2022 (in English): <https://www.article19.org/resources/tunisia-new-draft-constitution-threatens-democracy/>.

See also a press release of the SNJT (National Tunisian syndicate of journalists) on the draft of the constitution published on 5 July 2022 (in Arabic):

<http://snjt.org/2022/07/05/%d8%a8%d9%8a%d8%a7%d9%86-7/>.

³⁸³ The Tunisian electoral law (closed-list proportional representation (PR) system with the Hare Quota-Largest Remainders) is the reason for this mosaic of representation and the absence of large parliamentary coalitions that can agree on the NRA’s members.



Alongside the Constitutional changes outlined above, the work and independence is increasingly under threat. According to the information provided to the European Audiovisual Observatory by a member of the Board of the HAICA, during the Parliamentary elections (2022/2023), there was increasing tension between the HAICA and the Independent High Authority for Elections (*Instance supérieure indépendante pour les élections*, ISIE) who normally jointly regulate media coverage of elections. According to the same source, the HAICA disagreed with the ISIE (body in charge of the elections) and refused to sign the joint decree on the grounds that the process chosen by the ISIE did not guarantee transparent elections, compliant with the law and meeting the guaranteed minimum of democratic standards. During the Parliamentary elections, the ISIE created a monitoring unit to regulate audiovisual media, hence serving to marginalise the HAICA.

This joint role of the HAICA and the ISIE was removed by Decree-law No. 8 dated 8 March 2023.³⁸⁴ Article 5 abolishes the joint HAICA/ISIE regulatory structure leaving the task to regulate the media during elections to the ISIE alone. According to the same source, the ISIE members are appointed by the President, which raises questions regarding their independence.

Moreover, according to the same source, after the departure of HAICA's President in January 2023, the Government entrusted the HAICA Secretary General, a government official seconded to HAICA, with the "administrative and financial management" of the body, which calls into question the HAICA's independence from the government.

In addition, the HAICA was subjected to pressure from the Government to stop the broadcasting of a series entitled "Fellouja" on the private channel "AL Hiwar Ettounis" on the first day of Ramadan, as it was considered contrary to Islamic values. As both the Constitution and the Decree-Law n° 2011-116 prohibit the "a priori" control of fictional programmes (in line with international standards), the HAICA refused to prohibit the broadcast of the series. A closed Ministerial Council meeting (24 March 2023) instructed the Minister of Education to initiate legal action in summary proceedings to stop the programme. Faced with what HAICA considers a clear violation of Articles 37, 38 and 49 of the Constitution relating to the freedom of the press, thought, expression and culture, the six members of the Board of the HAICA announced that they would most likely present their collective resignation during a press conference at the end of March 2023 stating that they could not continue to administrate the audiovisual service in a democratic environment.

4.10.2.3. 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. The regulation of content in broadcasting is largely defined in a Decision of the

³⁸⁴ Decree-law No. 8 dated 8 March 2023 amending the organic law No. 16 of 26 May 2014 on elections and referenda:

http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_17980-37-HksHoDdkFj/Principal/SYNC_-372773637



HAICA relating to conditions of granting a licence for the creation and exploitation of a private television channel.

Table 158. 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 – closely aligned with the 2010 and 2018 AVMSD</p> <p>Article 5 stipulates that the exercise of the rights and freedoms of communication and access to communication (as outlined in Articles 3 and 4) is carried out on the basis of a range of principles and subject to the rules relating to the respect of the rights of others: including the protection of the child.</p> <p>***</p> <p>Yes – closely aligned with the 2010 and 2018 AVMSD</p> <p>Article 13 requires that licence holders use symbols and marks to indicate harmful content to minors, stating that the program is forbidden to children according to types of classification depending on the content. This symbol stays throughout the broadcast of the program.</p>	<p>Decree-law n° 2011-116 on freedom of audiovisual communication and establishment of the HAICA Article 5</p> <p>***</p> <p>Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a license for creation and exploitation of a private television channel</p> <p>Article 13</p>
<p>Prohibition of commercial use of personal data of minors collected when implementing these measures.</p>	<p>Article 28: The processing of personal data related to a child cannot be carried out without the consent of his tutor and after authorization of the juvenile and family court judge.</p> <p>The juvenile and family court judge may authorize processing even without the tutor's consent when it is required in the child's best interest. At any time, the authorization may be withdrawn by the juvenile and family court judge.</p> <p>Article 30 The consent given to the processing of personal data under a given form for a given purpose shall not apply to other forms or purposes. It is prohibited to use the processing of personal data for promotional purposes unless the data subject, his heirs or his tutor gives his explicit and specific consent. This consent shall be governed by the general rules of law. The provisions of article 28 of the hereby Act shall apply if the data subject is a child.</p>	<p>Organic Act n°2004-63 of July 27th2004 on the protection of personal data</p> <p>https://www.ictpolicyafrica.org/en/document/_1bmfv348zxf?page=7</p> <p>Article 30</p>
<p>Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals).</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 12: The licence holder is obligated to inform the viewers before the start of the programme that the programme contains scenes of violence that may affect sensitive groups of viewers, especially children under a specific age, for a period of ten seconds, before</p>	<p>Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a licence of creation and exploitation of a</p>



	broadcasting the programme. As noted above, an appropriate symbol (according to types of classification depending on the content) remains on the screen throughout broadcast (Article 13).	private television channel Articles 12 and 13
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	Yes – aligned with the 2018 AVMSD Article 54: Advertising is prohibited for: tobacco and alcohol, weapons and all materials prohibited by law. However, it does not include reference to electronic cigarettes.	As above, Article 54
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Partly aligned with the AVMSD Article 62: The exploitation of minors in advertising is prohibited, unless the product subject of the advertisement concerns them directly. In the event that the product subject to advertisement poses a danger to minors, it must be noted in a clear line for a period of no less than four seconds at the beginning of the flash broadcast.	As above, Article 62
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Yes – closely aligned with the 2018 AVMSD Article 62: If the advertisement relates to foodstuffs whose excessive consumption would harm the health of the minor, then it must be noted in a clear line for a period of no less than four seconds that it should be consumed in moderation.	As above, Article 62
Prohibiting of product placement in children's programmes	Not aligned, but addresses other issues related to minors and advertising. Article 2 paragraph 9: "It is prohibited to involve children in online shopping programmes, as well as to employ them in advertising communications in a manner that does not take into account their best interests."	Decision of the NRA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules, Article 2 (9)

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

The main obstacles to the implementation of the obligations regarding the protection of minors are: a lack of knowledge on the part of journalists and other media professionals; and a lack of infrastructure and resources to enable the NRA to control all violations. Several obligations appear to be missing from the Tunisian laws and would therefore need to be introduced in the future legislation, for example, the protection of the minors' personal data and the use of a system describing the potentially harmful nature of the content of an audiovisual media service.



Television channels are obliged to respect several obligations regarding the protection of minors enshrined in the Decisions regarding licencing of creation of private television channels. The HAICA regularly notifies TV channels when they violate, for the first time, their obligations regarding the protection of minors. In this notification the HAICA explains the issues to help TV channels to avoid committing such mistakes in the future. The HAICA has an online complaint system which allows victims and other concerned persons to send a complaint regarding any kind of violation of the rights of minors.³⁸⁵

The HAICA is engaged in organising workshops and training sessions to raise awareness. In addition, it developed a guide on “media treatment of children's issues”.³⁸⁶ Drafted in 2021, this project was developed in cooperation with the United Nations Children's Fund (UNICEF) with support of an international expert in the field of human rights, development and media. The Guide includes guiding principles, legislative provisions and international conventions aimed at strengthening the respect of children's rights in the media as well as good practices in the treatment of topics related to children. The project also involved the collaboration with a range of stakeholders including ministries, journalists, experts, specialists as well as representatives of official organisations, and civil society organisations specialised in the field of children's rights.³⁸⁷

Regarding media and information literacy (MIL), several initiatives from civil society organisations are being developed in partnership with the Ministry of Education. Some schools have created a human rights club where pupils are learning the basic principles of MIL.

4.10.2.4. 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”.

In Tunisia, there is a lack of obligations in the national legislation to oblige audiovisual media service providers to adopt measures of accessibility. This issue is not mentioned in the Decree-law n°116-2011. However, the 2022 Constitution under Article 54 guarantees the protection of people with disabilities from discrimination. It also provides that the state will take all measures appropriate to guarantee their complete integration into society. This may lead to additional regulations in this area.

In relation to private broadcasting, a minor reference to the people with disabilities exists in the Decision of the HAICA n° 2, 2014 on licensing of private television channels, which under Article 24 provides that “the holder of licence should ensure the participation of people with disabilities in the programmes.” Also, Article 58 provides that “Every

³⁸⁵ <http://plainte.haica.tn/?lang=ar>

³⁸⁶ <https://haica.tn/wp-content/uploads/2021/10/Guide-enfance-et-media-audiovisuel-04-10-2021.pdf>

³⁸⁷ Agence Tunis Afrique Press (18/05/2021): HAICA: new draft guide on media treatment of child-related issues, <https://www.tap.info.tn/en/Portal-Society/14008084-haica-new-draft>.



advertisement must fulfil the ethical rules that achieve respect for human dignity and ensure that no form of exclusion, including exclusion on the basis of geographical, religious, gender, age or disability, must be made.” There are no particular practices of the regulator with regard to promoting accessibility of content, but the HAICA has sanctioned several television and radio channels because of violations of the rights of people with disabilities.

4.10.2.5. 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 Tunisia regarding these provisions.

Table 159. 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 Article 30: The licence holder shall provide viewers with a postal address and a website that enables the submission of comments, notes, demands and complaints related to programmes. The licence holder is also obligated to answer such complaints/ comments according to conditions determined by the HAICA. The licence holder is also obligated to publish the following updated data on its website: the name of the licence holder and the name of the responsible manager; the company's form, social name, term, capital, headquarters and the name of its legal representative; the company's annual financial budget; the licence agreement.	Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a licence of creation and exploitation of a private television channel, Article 30
Possible to also require AVMS providers to make accessible information on their ownership structures.	Partly aligned with 2018 AVMSD Based on Article 46, this information is sent only to the NRA. There is no obligation to make this public	As above, Article 46
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	Not mentioned	

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



Despite the legal requirements to guarantee the transparency of media ownership, the situation in reality is not so clear cut. The media are not publishing the details required by Article 30 from the Decision of the HAICA (n° 2 of 2014). Also the relationships between television channels and other companies in the audiovisual production sector is unclear. The lack of transparency is due mainly to: political influence on media owners and the use of media for political propaganda (example of Zeitouna TV, Nessma TV, Hannibal TV); a very limited budget from advertising as the local market is small - therefore, several media could not cover financial costs and found themselves obliged to search for fund from illegal sources.³⁸⁸

Regarding the role of the NRA in the promotion of pluralism, Article 127 of the 2022 Constitution provides that an Audiovisual Communication Commission is responsible for the regulation and development of the audiovisual communication sector and ensures freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity. Article 6 of the Decree-law n°116-2011 stipulates that the HAICA is charged with guaranteeing the freedom and pluralism of the audiovisual communication. HAICA should also strengthen the public right to information and knowledge, through the guarantee of pluralism and diversity in the programmes relevant to public life. The NRA publishes periodic reports on political pluralism in the media.³⁸⁹

4.10.3. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works. The current legislation does not address the issue of promotion of European works. The Decree-law n°116-2011 provides that media have to encourage national productions but there is not a clear percentage linked to the promotion of national works.

However, and in accordance with the provisions of the Licence Agreement, the media must respect in their programming determined rates in relation to national production, the distribution of Tunisian songs, etc.

The HAICA has called on the government several times to create a funding mechanism to encourage national works, but so far this has not been successful.

Very recently, the HAICA carried out, thanks to the support of the new Tunisian media support programme called PAMT 2 and financed by the European Union, a study entitled "Study relating to the creation of a support fund for audiovisual creation" to present a number of comparative experiences and emphasise the need for this kind of fund and its contribution to boost creation and help the media to face the crisis and improve the quality of audiovisual content. The study is currently in press and will be made public shortly.

³⁸⁸ The HAICA is regularly publishing information on the transparency of ownership and financing of television channels.

³⁸⁹ See for example June and July reports from 2021: <https://haica.tn/wp-content/uploads/2021/06/Rapport.pdf> and <https://haica.tn/wp-content/uploads/2021/09/Rapport-pluralisme-25-31-juillet-2021.pdf>.



4.10.4. 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 160. Audiovisual commercial communications (ACCs)

AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
<p>ACC should be recognisable. Surreptitious ACC shall be prohibited and ACC shall not use subliminal techniques.</p>	<p>Yes - aligned with the 2018 AVMSD</p> <p>Under Article 48, there must be a clear distinction between the advertisement and the rest of the programming, and the beginning and end of advertising spots must be announced;</p> <p>***</p> <p>Surreptitious ACC is prohibited in Article 2 (9). Subliminal techniques in advertisements are not explicitly banned but TV channels have to separate in a clear manner between the advertising messages and the rest of the programmes with a clear announcement of the beginning and end of the advertisement with a sign, music or sound.</p>	<p>Decision of the HAICA n° 2, 2014 on specifications fixing the conditions of granting a licence of creation and exploitation of a private television channel, Article 48</p> <p>***</p> <p>Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules, Article 2 (9)</p> <p>Article 2 (4)</p>
<p>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;</p>	<p>Yes – aligned with the 2018 AVMSD</p> <p>Article 2 states that all forms of advertisement should comply with the principle of the human rights, including in particular respect for human dignity and non-discrimination on the grounds of sex, religion or origin.</p> <p>There is no mention of the protection of the environment.</p>	<p>Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules, Article 2</p>
<p>ACC for the prescription of medicinal products and medical treatment shall be prohibited.</p>	<p>Not mentioned</p>	



<p>Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor</p>	<p>Yes – partly aligned with the 2018 AVMSD</p> <p>Paragraph 5 of the second Article stipulates that advertising, in any form, is prohibited during news and religious programmes.</p> <p>Article 8 forbids sponsorship from companies manufacturing or selling cigarettes, tobacco products.</p> <p>But sponsorship is not prohibited in children's programmes.</p>	<p>Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules, Article 2 (5), Article 8</p>
<p>No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes.</p>	<p>Yes - partly aligned with the 2018 AVMSD.</p> <p>Paragraph 5 of the second Article stipulates that advertising, in any form, is prohibited during news and religious programmes.</p> <p>PP is not prohibited in children's programmes.</p>	<p>Decision of the HAICA n° 2018-1 on 15 February 2018 on audiovisual advertisement rules, Article 2 (5),</p>
<p>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.</p>	<p>Yes - aligned with the 2018 AVMSD.</p> <p>Placing the product should not affect the responsibility and independence of the editorial line, as for example if the content of the programme is adapted to serve the product.</p> <p>It should not urge in any way to buy or rent the product or the service or give additional information about it.</p>	<p>As above, Article 12</p>
<p>Viewers shall be clearly informed of the existence of product placement in a programme.</p>	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Article 14 contains several conditions to allow viewers to be informed of the existence of product placement in a programme.</p>	<p>As above, Article 14</p>
<p>Limiting the proportion of television advertising spots and teleshopping spots: throughout the day?; or during particular time periods?</p>	<p>Yes – closely aligned with the AVMSD in that there are limits.</p> <p>The main principle is 10 minutes of ads in one hour (in Ramadan it is increased to 14 minutes). (Article 3)</p> <p>Advertising spots should not exceed 5 minutes in one shot (Article 4). Media content should last at least 15 minutes before the ads resume (Article 4).</p>	<p>As above, Articles 3, 4, 28</p>



	Teleshopping is allowed only from midnight to 11 am and from 2 pm till 4 pm (Article 28).	
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Not mentioned	

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

The legislative framework covering ACCs is closely aligned with the provisions of the 2018 AVMS Directive, covering most of the key issues.

As the advertising market is very limited, Tunisian audiovisual media services frequently violate the provisions regarding ACCs to collect more resources. For example, they mix entertainment and ACCs and also news and ACCs. Other hurdles include the absence of clear legislation related to advertising companies and their relations with audiovisual media services, and the absence of a media audience measurement framework. The HAICA is working on the creation of a self-regulatory body on media audience measurement with the aim to organise the distribution of the advertising revenues.³⁹⁰

4.10.5. Provisions applicable to video-sharing platforms – VSPs

VSPs are not yet included in the scope of audiovisual media legislation in Tunisia.

4.10.6. Concluding remarks and summary of findings

The media legislative framework in Tunisia is largely based on two important laws that emerged following the 2011 revolution. These are the Decree-law n° 2011-115 which aimed to guarantee the freedom of the press, printing and publishing.; and the Decree-law n° 2011-116, which enshrined the freedom of audiovisual communication and established the Higher Independent Authority of Audiovisual Communication (HAICA). 2014 saw the adoption of the Constitution of Tunisia, which guaranteed the freedom of expression, and also provided that independent constitutional bodies (including the NRA) shall act in support of democracy (Article 125).

³⁹⁰ See the press article from LEADERS: Mesure d'audience : La HAICA institue un groupement, professionnel pour s'en charger et définit le cadre des enquêtes, published on 24-4-2020.

<https://www.leaders.com.tn/article/29764-mesure-d-audience-la-haica-institue-un-groupement-professionnel-pour-s-en-charger-et-definit-le-cadre-des-enquetes>.

See also the decision of the HAICA n°7-2020 dated 13 April 2020 related to the measure of audience of audiovisual media service. Available in Arabic: <https://legislation-securite.tn/ar/law/104800>.



The framework would need to be updated to reflect the changes in technology and consumption. This has not yet been achieved despite various initiatives in this area. The HAICA facilitated the introduction of private broadcasting via several decisions, and the obligations on licence holders therein are the basis for several areas of regulation such as the protection of minors, and also transparency of ownership. Most of the general principles and key values are covered in the national framework – but there are few obligations in the area of accessibility for people with disabilities. The HAICA has developed several guides for the audiovisual media sector on hate speech, protection of minors, media coverage of terrorism, and media coverage of women. It also adopted a decision on advertising rules in 2018. The sections of the law dealing with audiovisual commercial communications, the independence of the NRA, and transparency of media ownership are almost completely in line with the EU *acquis* and with European standards. As VSPs are not in the scope of the law, certain provisions on the protection of minors, and on audiovisual commercial communications do not reflect the 2018 AVMS Directive.

Several issues have been raised in relation to freedom of expression, and to the use by the courts of penal laws rather than the relevant media legislation when dealing with issues of defamation. The penal laws provide for harsher sanctions including imprisonment.

Tunisia has been in the midst of a political transition since July 2021. A Constitutional referendum in July 2022 was passed which attributes significant powers to the President.

While, the freedom of expression is still guaranteed under Article 37, the NRA has lost the Constitutional guarantees of its independence following the adoption of the 2022 Constitution. The previous Constitution under Article 125 stipulated the role of independent institutional bodies: independent constitutional bodies act in support of democracy; and all institutions of the state must facilitate their work. These bodies should enjoy a legal personality and financial and administrative independence. This provision has been removed. Also, the previous Constitution Article 127 which tasked the audiovisual regulatory authority with the responsibility for the regulation and development of the audiovisual communication sector and ensuring freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity has been removed.

Also, the role of the HAICA in jointly regulating media coverage of elections with the Independent High Authority for Elections (*Instance supérieure indépendante pour les élections*, ISIE) was removed by Decree-Law No. 8 dated 8 March 2023.³⁹¹

According to additional information from national experts, the independence and functioning of the HAICA continues to be under threat.

In addition, the Tunisian President issued a decree law on the fight against crimes relating to information and communication systems in September 2022 to introduce a criminal penalty for the dissemination of (among others) false news and rumours. It also addresses other issues such as defamation. Where such false news or rumours or

³⁹¹ Decree-law No. 8 dated 8 March 2023 amending the organic law No. 16 of 26 May 2014 on elections and referenda:

http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_17980-37-HksHoDdkFj/Principal/SYNC_-372773637



defamation concern a public official, penalties are doubled (10 years of prison and fine of 100 000 dinars).

Following the parliamentary elections (of December 2022 and January 2023), independent media was barred from attending and reporting on the opening session of the new Parliament.

In 2023, arrests of activists and journalists continued in Tunisia, according to the Council of Europe, with one journalist being sentenced to five years imprisonment. The Decree (see above) which introduced criminal sanctions has led to the arrest and conviction of six journalists. In June 2023, the UN High Commissioner for Human Rights called on the authorities to stop restricting media freedoms and criminalizing independent journalism.³⁹²

The list³⁹³ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024. List of relevant documents, reports, opinions etc.

Table 161. Relevant documents, reports, opinions

Title	Main topics/ themes	Link if available
A. Zaghdoudi (2021) : L'interprétation démocratique de la question de concurrence des lois en matière de la liberté d'expression, dans : Association Tunisienne de défense des libertés individuelles (2021) : Les Libertés au Prétoire ! - Les Juridictions Protectrices des Libertés Recueil de Commentaires de Décisions Juridictionnelles.	Judicial decisions regarding freedom of expression	In French https://tn.boell.org/sites/default/files/2022-04/3.%20Ouvrage%20les%20libert%C3%A9s%20au%20pr%C3%A9toire%20version%20en%20langue%20fran%C3%A7aise_2.pdf
Mustapha Ben Letaief (2018): Freedom of Speech in Tunisia: Texts and Context. For the Menamedia Law Project	Freedom of speech	In English https://www.menamedialaw.org/sites/default/files/library/material/tunisia_chp_2018.pdf
Reporters sans frontières (2016): Media Ownership Monitor Tunisia	Media ownership	In French https://tunisia.mom-rsf.org/fr/medias/
European Union – MEDMEDIA (2015) Assessment of Media Legislation in Tunisia. Prepared by Ahmed Ghazali.	EU project MEDMEDIA report on Tunisia media legislation	In English https://www.menamedialaw.org/sites/default/files/library/material/medmedia_tunisia.pdf

³⁹² <https://www.ohchr.org/en/press-releases/2023/06/tunisia-crackdown-media-freedoms>

³⁹³ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



UNESCO (2012) Étude sur le développement des médias en Tunisie basée sur les indicateurs de développement des médias de l'UNESCO	Media ownership, media pluralism (among others)	In French https://unesdoc.unesco.org/ark:/48223/pf0000219222
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Source: Response of national expert of Tunisia to European Audiovisual Observatory standardised survey

4.10.7. Data compilation

This country report is based on information and materials supplied by the national expert Professor Aymen Zaghoudi, Assistant Professor of public law at the Institute of Press and Information Sciences in Manouba, and legal advisor of the Middle East and North Africa office of ARTICLE 19.



4.11. Ukraine (UA)³⁹⁴ (Country report A³⁹⁵)

Disclaimer

The views reflected in this report are solely the ones of the European Audiovisual Observatory. While this project was carried out with the financial support of the European Commission, the latter has no responsibility for the content of this report and the points of view which are expressed.

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

- In Ukraine, the legal framework relevant to audiovisual media regulation and freedom of expression is complex. There are many overlapping, complementary and supplementary laws. The previous key text was the “Law on Television and Radio Broadcasting (1994)”. In 2020, a Draft Law on Media was developed to update the legislation and align with the 2018 Audiovisual Media Services (AVMS) Directive (2018/1808). This Draft Law also aimed to regulate online media, which led to some initial criticism from stakeholders. Due to the full-scale invasion by Russia, stakeholders moved closer to agreement on regulation of online media and discussed the approach to this. The new Law was adopted by the Parliament on 13 December 2022 and signed by the President on 29 December 2022.³⁹⁶
- The country faces a deep crisis due to the Russian war of aggression against Ukraine. At the same time, a range of supplementary laws and presidential decrees relevant to the media have emerged, partly in response to the war.
- With regard to general principles, and the key values promoted by the Directive, the majority are addressed in the legislative framework. Several areas needed updating,

³⁹⁴ The country report on Ukraine incorporates the feedback received from Valentyn Koval, First Deputy Chairperson of the National Council of TV and Radio Broadcasting of Ukraine, during the checking round with the national regulatory authorities.

³⁹⁵ Country report A outlines the findings of Questionnaire A in relation to Group II, which includes Ukraine.

³⁹⁶ Reporters without Borders (2022): RSF hails Ukraine’s adoption of new media law, despite war with Russia. <https://rsf.org/en/rsf-hails-ukraine-s-adoption-new-media-law-despite-war-russia>



such as the provisions on jurisdiction, and procedures for derogations from the principle of freedom of reception and retransmission.

- The adoption of the new Law on Media moved the legislative framework closer to alignment with the 2018 AVMS Directive, particularly as regards the protection of minors, the provisions on video-sharing platforms (VSPs), on accessibility, on European works and on the independence of the national regulatory authority (NRA). A recent Opinion of the Council of Europe made an overall positive assessment of the new Law. Amendments to the Law on Advertising adopted on May 30 2023 aligned the definitions and provisions regarding ACCs.
- Current debates and discussions regarding freedom of expression, counteracting propaganda, and ensuring the security of information in the context of war are addressed in the country report.
- The list³⁹⁷ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

4.11.1. Introduction

In the context of this research, Ukraine is one of the European neighbourhood countries participating in Creative Europe 2014-2020 and is partially included in the MEDIA strand (Group II countries). Partial participation in the MEDIA and CROSS strands can be pursued only if there is compliance with general principles; full participation in clusters 2 and 3 is possible if tangible progress is made towards transposing the Audiovisual Media Services Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (hereinafter the AVMS Directive or AVMSD) i.e. rules on linear services are aligned and there is progress regarding the alignment of rules on on-demand services; full participation in all actions in the MEDIA and CROSS strands is possible if there is full alignment with the AVMS Directive.

The country faces a deep crisis due to the Russian war of aggression against Ukraine, in particular since the full-scale invasion of Ukraine launched on 24 February 2022. Relations between the European Union (EU) and Ukraine are based on the Ukraine–European Union Association Agreement³⁹⁸ and the Deep and Comprehensive Free Trade Area (DCFTA). On 28 February 2022, shortly after the Russian invasion, Ukraine applied for

³⁹⁷ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf

³⁹⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29>.



membership of the EU. On 23 June 2022, the European Council decided to grant the status of candidate country to Ukraine.³⁹⁹

4.11.1.1. Relevant framework: current status and developments

The table below outlines the relevant national legal framework for the audiovisual sector, including mainly those acts of most relevance to the issues addressed in this country report. It is important to note that this country report does not outline the national rules related to the entire AVMS Directive, but focuses 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 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 (ACCs) and video-sharing platforms (VSPs).

There exists an extensive range of laws, presidential decrees, and decisions of the NRA related to the media sector, which are too numerous to include here. When relevant to the issues under discussion, these will be referred to in the text or in the footnotes. All relevant links appear in this first table.

Table 162. Legal framework

Title	Status	Relevance	Link
The Constitution of Ukraine 1996, last amended 2019 Конституція України 1996 (Ukrainian)	In force	Fundamental rights Non-discrimination Composition of the NRA	In Ukrainian: https://www.president.gov.ua/documents/constitution In English: https://www.refworld.org/pdfid/44a280124.pdf
Law No. 2693-d on Media (13.12.2022) (hereinafter “Law on Media” (2022))	In force from 31.03.2023	The law aims to ensure the right to freedom of expression, the right to receive information, to ensure pluralism of opinions	In Ukrainian: https://itd.rada.gov.ua/billInfo/

³⁹⁹ European Council conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, 23 June 2022: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>.



Title	Status	Relevance	Link
Закону №2693-д про медіа (13.12.2022) (Ukrainian)		and free dissemination of information, to protect the national interests of Ukraine and the rights of users of media services. It regulates activities in the media area in accordance with the principles of transparency, fairness and impartiality. It promotes competition, equality and independence of the media. It determines the legal status, formation, activities and powers of the NRA.	Bills/Card/3115
Law of Ukraine on Television and Radio Broadcasting 1994 (last amended 16 August 2022) – hereinafter referred to as the “Law on Television and Radio Broadcasting” Закон України «Про телебачення і радіомовлення» (1994, остання редакція 16.08.2022) (Ukrainian)	In force until 31.03.2023, replaced by the new Law on Media	Main law on the regulation of broadcasting, jurisdiction, freedom of expression, incitement to hatred or violence, protection of minors, European works, transparency of media ownership, etc.	In Ukrainian: https://zakon.rada.gov.ua/laws/show/2534-20#n8 In English (16 March 2022): https://zakon.rada.gov.ua/laws/show/en/3759-12#Text
Law of Ukraine on National Council of Ukraine on Television and Radio Broadcasting 1997 (last amended 18 August 2022) – hereinafter referred to as the “Law on National Council of Ukraine on Television and Radio Broadcasting” Закон України «Про Національну раду з питань телебачення і радіомовлення України» (1997, остання редакція 18.08.2022) (Ukrainian)	In force	Law on the establishment, functioning, competences of the NRA – the National Council of Ukraine on Television and Radio Broadcasting (hereinafter referred to as the “National Council”)	In Ukrainian only: https://zakon.rada.gov.ua/laws/show/2534-20#n6
Law of Ukraine on Public Television and Radio Broadcasting of Ukraine 2014 (last amended 12 February 2021) Закон України «Про Суспільне телебачення та радіомовлення України» (2014, остання редакція 12.02.2021) (Ukrainian)	In force	Law on the public service broadcaster	In Ukrainian only: https://zakon.rada.gov.ua/laws/show/1227-18#Text



Title	Status	Relevance	Link
<p>Law of Ukraine on Information 1992 (last amended 1 January 2022)</p> <p>Закон України «Про інформацію» (1992, остання редакція 01.01.2022) (Ukrainian)</p>	In force	Freedom of expression, activities of the media and journalists	<p>In Ukrainian: https://zakon.rada.gov.ua/laws/show/2657-12#Text</p> <p>In English: https://zakon.rada.gov.ua/laws/show/en/2657-12#Text</p>
<p>Law of Ukraine on Advertising 1996 (last amended 30 May 2023) – hereinafter referred to as the “Law on Advertising” (1996; 2022; 2023)</p> <p>Закон України «Про рекламу» (1996, остання редакція 08.01.2022) (Ukrainian)</p>	In force	Regulation of advertising	<p>In Ukrainian: https://itd.rada.gov.ua/billInfo/Bills/Card/41772</p>
<p>Criminal Code of Ukraine 2001 (last amended 13 April 2022)</p> <p>Кримінальний кодекс України (2001, остання редакція 13.04.2022) (Ukrainian)</p>	In force	Deals with incitement to violence, incitement to hatred, illegal content	<p>In Ukrainian: https://zakon.rada.gov.ua/laws/show/2341-14#Text</p> <p>In English: https://zakon.rada.gov.ua/laws/show/en/2341-14</p>
<p>Law of Ukraine on Electronic Communications 2020 (last amended 22 March 2022)</p> <p>Закон України «Про електронні комунікації» (2020, остання редакція 22.03.2022) (Ukrainian)</p>	In force	Electronic communications sector and telecommunications	<p>In Ukrainian only: https://zakon.rada.gov.ua/laws/show/1089-20#top</p>
<p>Law of Ukraine on the International Broadcasting System of Ukraine 2016 (last amended 11 June 2020)</p> <p>Закон України «Про систему іномовлення Україна» (2016, остання редакція 11.06.2020) (Ukrainian)</p>	In force	Ukrainian international broadcasters	<p>In Ukrainian: https://zakon.rada.gov.ua/laws/show/856-19#Text</p> <p>In English: https://zakon.rada.gov.ua/laws/show/en/856-19#Text</p>



Title	Status	Relevance	Link
			da.gov.ua/laws/show/en/856-19#Text
<p>Law of Ukraine on Access to Public Information 2011 (last amended 19 February 2022)</p> <p>Закон України «Про доступ до публічної інформації» (2011, остання редакція 19.02.2022) (Ukrainian)</p>	In force	Access to information	<p>In Ukrainian: https://zakon.rada.gov.ua/laws/show/2939-17#Text</p> <p>In English: https://zakon.rada.gov.ua/laws/show/en/2939-17#Text</p>
<p>Law of Ukraine on Protection of Information in Information and Telecommunication Systems 1994 (last amended 01 January 2022)</p> <p>Закон України «Про захист інформації в інформаційно-телекомунікаційних системах» (1994, остання редакція 01.01.2022) (Ukrainian)</p>	In force	Security of information	In Ukrainian: https://zakon.rada.gov.ua/laws/show/80/94-%D0%B2%D1%80#Text
<p>Civil Code of Ukraine 2003 (last amended 17 March 2022)</p> <p>Цивільний кодекс України (2003, остання редакція 17.03.2022) (Ukrainian)</p>	In force	Deals with civil law including the right to information and defamation issues	In Ukrainian: https://zakon.rada.gov.ua/laws/show/435-15#Text
Relevant secondary legislation: bylaws, codes, decisions and presidential decrees			
<p>Decree of the President of Ukraine No. 152/2022 On the decision of the National Security and Defence Council of Ukraine of 18 March 2022 "On the implementation of a unified information policy in war time" (19 March 2022)</p> <p>Указ Президента України №152/2022 «Про рішення Ради національної безпеки і оборони України від 18 березня 2022 року «Щодо реалізації єдиної інформаційної політики в умовах воєнного стану» (19.03.2022)</p>	In force	Information policy	In Ukrainian: https://www.president.gov.ua/documents/1522022-41761



Title	Status	Relevance	Link
(Ukrainian)			
<p>Decree of the President of Ukraine No. 685/2021 On the decision of the National Security and Defence Council of Ukraine of 15 October 2021 "On the Information Security Strategy" (28 December 2021)</p> <p>Указ Президента України №685/2021 «Про рішення Ради національної безпеки і оборони України від 15 жовтня 2021 року «Про Стратегію інформаційної безпеки» (28.12.2021)</p> <p>(Ukrainian)</p>	In force	Information security	In Ukrainian: http://materialy.kmu.gov.ua/d08bb830/docs/cd2d9166/Dodatok.pdf
<p>Decree of the President of Ukraine No. 151/2022 On the decision of the National Security and Defence Council of Ukraine of 18 March 2022 "On the neutralisation of threats to state information security" (19 March 2022)</p> <p>Указ Президента України №151/2022 «Про рішення Ради національної безпеки і оборони України від 18 березня 2022 року «Про нейтралізацію загроз інформаційній безпеці держави» (19.03.2022)</p> <p>(Ukrainian)</p>	In force	Information security	In Ukrainian: https://www.president.gov.ua/documents/1512022-41757
<p>Decree of the President of Ukraine No. 152/2022 "On the decision of the National Security and Defence Council of Ukraine of 18 March 2022 "On the implementation of a unified information policy in war time" (19 March 2022)</p> <p>Указ Президента України №152/2022 «Про рішення Ради національної безпеки і оборони України від 18 березня 2022 року «Щодо реалізації єдиної інформаційної політики в умовах воєнного стану» (19.03.2022)</p> <p>(Ukrainian)</p>	In force	Unified information policy in time of war	In Ukrainian: https://www.president.gov.ua/documents/1522022-41761

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



A new Law on Media was adopted by Parliament in December 2022. Prior to this, the key legislative documents in relation to the implementation of the EU acquis included the Law on Television and Radio Broadcasting (1994) – which is focused on linear audiovisual media services. The new Law on Media is intended as a more comprehensive law to include broadcasters, on-demand audiovisual media services and VSPs. This law is discussed further below. Also of significance is the Law on the National Council of Ukraine on Television and Radio Broadcasting (1997). This law establishes the functioning, competences, organisation, etc. of the NRA, the National Council on Television and Radio Broadcasting (hereinafter referred to as “the National Council”).

The Law on Media (2022) also has updated provisions on the National Council which suggests that there is also an intention to update the Law on the National Council on Television and Radio Broadcasting (1997). As regards advertising and commercial communications, the Law on Advertising (1996) is the key piece of legislation and the Ukrainian Parliament adopted amendments to the Law on Advertising on 30 May 2023.

The Law on Media (2022) also aims to regulate online media; this had previously been blocked by some stakeholders at the national level before the full-scale Russian invasion. The discussions on this legislative proposal focused on the need to regulate online media, to strengthen the NRA and to restrict certain types of content, such as content related to Russia. Ukrainian experts, journalists, and representatives of the business sector could not find common ground on these issues.⁴⁰⁰

Several expert analyses were carried out by international organisations on the draft versions of the new Law on Media. Some criticism was expressed in the legal analysis carried out for the Organization for Security and Cooperation in Europe (OSCE) where it was emphasised that there were risks of excessive sanctions in the form of the absolute prohibition of media outlets in the territory of Ukraine, as well as overly ambiguous requirements regarding the members of the National Council.⁴⁰¹ Council of Europe experts stressed that the inclusion of online media in the scope of the act regulating audiovisual media is not a common practice and should be limited to the registration of such services, and also that it would be wise to postpone the introduction of online media regulation until a European framework addressing all the necessary standards has been developed.⁴⁰² In July 2020 the EU Delegation in Ukraine proposed further discussions around the Draft Law in order to reach a public consensus.⁴⁰³ On the other hand, many organisations, including

⁴⁰⁰ See discussion: <https://www.radiosvoboda.org/a/zakon-pro-media-krytyka/30670314.html>. See also the statement of The National Union of Journalists of Ukraine opposing the Draft Law on Media: <https://nsju.org/novini/zakonoprojekt-pro-media-obyednav-proty-sebe-zhurnalistiv-a-kozhen-jogo-advokat-nosytyme-tavro-vorog-presy-nszhu/>. Some media organisations, journalists and bloggers signed an open statement calling for the exclusion of online media from the regulatory initiative: <https://gordonua.com/ukr/news/politics/-zakonoproekt-pro-media-mozhe-prizvesti-do-vstanovlennja-tsenzuri-jelizarov-shvets-gordon-koshkina-vlashchenko-sohar-shlinchak-batsman-limar-zvernulisja-do-zelenskomu-i-radi-1506926.html>.

⁴⁰¹ OSCE (2020): Legal Analysis of the Draft Law of Ukraine “On Media” Commissioned by the OSCE Representative on Freedom of the Media from Dr. Joan Barata Mir: <https://www.osce.org/files/f/documents/2/7/447508.pdf>.

⁴⁰² See comments of Jean-François Furnémont: <https://www.youtube.com/watch?v=iJF1JDC9b3w>. See also comments of Krisztina Rozgonyi: <https://www.youtube.com/watch?v=bjwVgBB36eE&t=7877s>.

⁴⁰³ <https://twitter.com/EUDelegationUA/status/1279099181316157442>.



the Independent Media Council – a self-regulatory body for journalists and media – expressed their support of the Draft Law insisting on the need to adopt it at the first reading.⁴⁰⁴ Despite initial criticism of the Draft Law, the war has brought about a closer consensus on the need to regulate online media. The new Law was adopted by the Parliament on 13 December 2022, and signed by the President on 29 December 2022. A recent Opinion of the Council of Europe noted that a significant improvement had been made in the law in comparison to earlier drafts: “To the extent that the Law covers the topics contained in AVMSD, it largely aligns with the Directive, and the same applies regarding its compliance with Council of Europe standards”.⁴⁰⁵ Some points of non-alignment were identified by the Opinion and these will be referred to where relevant in the text below.

4.11.1.2. Definitions and alignment with the AVMS Directive

Below is an overview of the alignment of relevant current definitions with the AVMS Directive.

Table 163. Definitions

Definitions (Article 1 AVMSD)	In line with AVMSD	References
Audiovisual media service	Yes - aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Article 1 (1)
Video-sharing platform (VSP) service	Yes – aligned with the 2018 AVMSD.	Law on Media (2022), Article 1 (38)
Programme	Yes – aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Article 1 (42)
User-generated video	Yes – aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Article 1 (24)
Editorial decision	Yes – aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Article 1 (48)
Editorial responsibility	Closely aligned with the 2018 AVMSD in the new Law on Media via a definition of “editorial control (editorial responsibility)”. Lacks the phrase “Editorial responsibility	Law on Media (2022), Article 1 (47)

⁴⁰⁴ <https://detector.media/community/article/178746/2020-07-13-nezalezhna-mediyna-rada-zaklykala-ukhvalyty-zakonoproiekt-pro-media-tsogo-roku/>.

⁴⁰⁵ CoE (February 23 2023): Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department on The Law on Media of Ukraine. Prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan <https://rm.coe.int/dgi-2023-03-ukraine-tp-law-on-media-2751-9297-4855-1-2753-6081-2551-1/1680aa72df>



Definitions (Article 1 AVMSD)	In line with AVMSD	References
	does not necessarily imply any legal liability under national law for the content or the services provided.”	
Media service provider	Yes – aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Part 2, Article 17
VSP provider	Yes – aligned with the 2018 AVMSD in the new Law.	Law on Media (2022), Article 18
Television broadcasting or television broadcast	Yes – aligned with the 2018 AVMSD in the new Law. The new Law introduces the definition: Broadcasting – means television or radio broadcasting irrespective of the technology, including on the Internet.	Law on Media (2022), Article 1 (31)
Broadcaster	Yes – aligned with the 2018 AVMSD in the new Media Law.	Law on Media (2022), Article 14
On-demand audiovisual media service	Yes – aligned verbatim with the 2018 AVMSD in the new Law.	Law on Media (2022), Article 14
Audiovisual commercial communication (ACC)	Partly aligned with the 2018 AVMSD in the Law on Media. Phrases such as “in return for payment” not included. Product placement not included. *** Yes - aligned with the 2018 AVMSD in the Law on Advertising	Law on Media (2022), Article 1 (51) *** Law of Ukraine on Advertising 1996 (amended 30 May 2023), Article 1 (1)
Television advertising	Not defined in the new Law on Media. There is a definition of “advertising” and a definition of ACC in the Law on advertising	Law on Advertising (1996; 2022; 2023), Article 1
Surreptitious ACC	Yes – aligned with the 2018 AVMSD.	Law on Advertising (1996; 2022; 2023), Article 1 (14)
Sponsorship	Partly aligned with the 2018 AVMSD. It does not include the qualification that sponsorship is not performed by undertakings not engaged in providing, producing or financing audiovisual media services or video-sharing platform services.	As above, Article 1 (25)
Teleshopping	Yes – aligned with the 2018 AVMSD in the Law on Advertising.	As above, Article 1 (26)
Product placement	Yes – aligned with the 2018 AVMSD in the Law on Advertising.	As above, Article 1 (20)



Definitions (Article 1 AVMSD)	In line with AVMSD	References
European works	Yes – aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Article 1 (12)
Independent producer	Yes – aligned with the 2018 AVMSD in the new Law on Media Aligned with the standard definitions of an “independent producer”: it emphasises the criteria of the ownership relationship between a broadcaster and a producer.	Law on Media (2022), Article 1 (35)
Definition of harmful content (or equivalent such as violation of integrity, or violation of dignity)	Yes – this is aligned with the 2018 AVMSD. Article 42 of the new Law outlines in detail types of content harmful to minors. Article 36 also details a range of harmful and prohibited content.	Law on Media (2022), Articles 42 and 36
Definition of incitement to hatred (or equivalent)	There are no specific definitions of incitement to hatred in the legislation. The Criminal Code prohibits: incitement to actions that pose a threat to the public order (Article 295); the importation, manufacture or distribution of works that promulgate violence and cruelty, racial, national or religious intolerance and discrimination (Article 300); and public incitement to an aggressive war or an armed conflict, and also production of materials inciting to commit any such actions for distribution purposes or distribution of such materials (Article 436). *** There are no specific definitions in the new Law on Media, but the prohibition of incitement to hatred is outlined under Article 36.	Criminal Code of Ukraine (2001; 2022), Articles 295, 300 and 436 *** Law on Media (2022), Article 36

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

The previous law – the Law on Radio and Television Broadcasting (1994) – was only partially aligned with either the 2010 AVMS Directive or the 2018 AVMS Directive in terms of definitions. The new Law on Media (2022) has introduced much more compatibility with the definitions in the 2018 AVMS Directive, for example in relation to VSPs, on-demand audiovisual services, European works, independent producers, etc. The new Law on Advertising adopted on 30 May 2023 has completed the alignment with regard to definitions relevant to audiovisual commercial communications. The Law on Media, under the provision related to establishing co-regulatory mechanisms specifically mentions developing codes related to audiovisual commercial communications that may be deemed damaging in accordance with advertising legislation (Article 92 (9)).



Harmful content is defined in relation to the protection of minors. There are no specific definitions of incitement to hatred in the laws. The Criminal Code and the Law on Media (2022) all have provisions relating to prohibiting hate speech. The Law on Media specifies that “statements that incite hatred, enmity or cruelty based on national, racial or religious grounds towards individuals or their groups, constitute gross infringements”.

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

The table below outlines the national legislative framework in relation to the establishment of jurisdiction.

Table 164. Jurisdiction

Provisions related to jurisdiction	In line with AVMSD	References
Article 2 of the AVMSD regarding jurisdiction of AVMS providers	Yes – aligned with the 2018 AVMSD in the new Law on Media	Law on Media (2022), Article 2 (8)
Article 2 (5a). Requirement that AVMS providers inform the competent NRAs or bodies about any changes that may affect the determination of jurisdiction	Not mentioned.	
Article 2 (5b). Requirement to maintain up-to-date list of the AVMS providers under national jurisdiction	Yes – aligned with the 2018 AVMSD. The National Council maintains a state register of operators in the media sector. The Law also requires that it include publicly accessible data.	Law on Media (2022), Article 68
Article 28a (paragraphs 1-5) regarding the establishment of the jurisdiction of VSPs	Yes – aligned with the 2018 AVMSD in the new Law.	Law on Media (2022), Article 2 (8 and 12)
Article 28a (paragraph 6). Requirement to maintain an up-to-date list of the VSP platform providers established or deemed to be established on their territory	The National Council maintains the Register of video-sharing platform providers in accordance with Article 2 (12). According to Article 63 (1), VSPs are subject to mandatory registration.	Law on Media (2022), Article 18 (3), Article 63 (1)
Article 28a (7) regarding the role of the European Regulators Group for Audiovisual Media Services (ERGA) in providing an opinion on jurisdiction	Not mentioned in the law.	



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

The new Law on Media (2022) aligns with most of the provisions above. It does not mention the obligation for AVMS providers to inform the competent NRAs or bodies about any changes that may affect the determination of jurisdiction.

Regarding the principle of freedom of reception and retransmission, Ukraine as a party to the European Convention on Transfrontier Television (ECTT), incorporates Article 4 of the ECTT⁴⁰⁶ in the national framework.

Table 165. 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	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Under Article 4 (5) of the Law on Media, the retransmission of television, radio programmes and shows, the content of which meets the requirements of the ECTT, shall not be limited on the territory of Ukraine. The Article also incorporates this principle and expands it to services from member states of the EU, and other television channels, or programme catalogues whose content complies with the requirements of the ECTT or the AVMS Directive.</p>	<p>Law on Media (2022), Article 4 (5)</p>
Article 3(2) – derogations from the principle of freedom of reception and retransmission	<p>Yes – closely aligned with the 2018 AVMSD.</p> <p>In the Law on Media, Article 4 (6) outlines the procedure in the cases where the regulator (the National Council) restricts the transmission of foreign media, which is closely aligned with the AVMS Directive.</p> <p>The Article also deals with “urgent cases related to national security”.</p> <p>A range of other restrictions on foreign media are included in the law in the context of the war. This is detailed under Article 119 - Restrictions on the Content of Information in the Media Related to Armed Aggression</p> <p>***</p>	<p>Law on Media (2022), Article 4 (6)</p> <p>Article 119 - Restrictions on the Content of Information in the Media Related to Armed Aggression</p> <p>***</p>

⁴⁰⁶ Article 4 – Freedom of reception and retransmission: The Parties shall ensure freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention.



AVMSD and the freedom of reception and retransmission	In line with AVMSD and European standards	References
	Article 28 of the Law of Ukraine “On Information” provides a general prohibition on calling for the overthrow of the constitutional order, infringing the territorial integrity of Ukraine, war propaganda, violence, cruelty, incitement to ethnic, racial or religious hatred, performing terrorist attacks, encroachment on human rights and freedoms.	Law of Ukraine “On Information”, Article 28

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

As can be seen from the table above, Ukrainian law enshrines the principle of freedom of reception and retransmission. The new Law on Media includes the detailed procedures with regard to derogations from this principle, as outlined in the AVMS Directive, and in line with the ECTT. Additional transitional provisions are included in the law in the context of the war. This is detailed under Article 119 - Restrictions on the Content of Information in the Media Related to Armed Aggression. In the recent Opinion of the Council of Europe, the experts noted that these restrictions on freedom of expression are within the derogations permitted by Art. 10.2 and Art. 15 of the European Convention on Human Rights (“ECHR”) for the period during which Ukraine is subject to armed aggression.

4.11.2. 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 166. General principles and key values

General principle/ key value	Relevant provision/ provisions	References
Principle of non-discrimination	Article 24 of the Constitution of Ukraine provides for equality of all individuals before the law, prohibiting any unjustified privilege or discriminatory treatment. Equality of the rights of women and men shall be ensured. *** The Law on the Principles of Preventing and Combating Discrimination in Ukraine provides the general principles on combating discriminatory treatment in Ukraine (Article 2) and	The Constitution of Ukraine, Article 24 *** Law on the Principles of Preventing and Combating Discrimination in Ukraine



General principle/ key value	Relevant provision/ provisions	References
	<p>details the obligations of state authorities in promoting equality (Article 6).</p> <p>***</p> <p>The Criminal Code of Ukraine prohibits the distribution of materials which might promulgate violence, intolerance or discrimination based on the protected grounds (Article 300).</p> <p>***</p> <p>The new Media Law under Article 36 (3) prohibits statements that incite discrimination or harassment against individuals and groups of individuals on the basis of ethnic and social origin, citizenship, race, religion and beliefs, age, sex, sexual orientation, gender identity, disability or other grounds.</p>	<p>2013, Articles 2 and 6</p> <p>***</p> <p>Criminal Code of Ukraine (2001; 2022), Article 300</p> <p>***</p> <p>Law on Media (2022), Article 36(3)</p>
<p>Prohibition of incitement to hatred and incitement to violence</p>	<p>These crimes are covered by more all-encompassing articles, such as the prohibition of incitements threatening public order and the prohibition of works which promulgate violence, cruelty, intolerance and discrimination. Article 295 prohibits, <i>inter alia</i>, incitement to actions that pose a threat to the public order.</p> <p>Article 300 prohibits the importation, manufacture or distribution of works that promulgate violence and cruelty, racial, national or religious intolerance and discrimination.</p> <p>***</p> <p>The Law on Information qualifies incitement to hatred as an abuse of freedom of expression (Article 28).</p> <p>***</p> <p>The Law on Media, under Article 36 (2), prohibits statements inciting hatred, hostility or cruelty towards individuals or groups of individuals on national, racial or religious grounds.</p> <p>It also prohibits calls for violent change, overthrow of the constitutional order, unleashing or waging an aggressive war or military conflict, violation of the territorial integrity of Ukraine, elimination of Ukraine's independence, information that justifies or promotes such actions (Article 36 (1)).</p>	<p>Criminal Code of Ukraine (2001, last amended 13 April 2022), Articles 295 and 300</p> <p>***</p> <p>Law on Information (1992; 2022), Article 28</p> <p>***</p> <p>***</p> <p>Law on Media (2022), Article 36 (2) and 36 (1)</p>
<p>Prohibition of criminal content: provocation to commit a terrorist offence; child pornography; racism and xenophobia,</p>	<p>The Criminal Code of Ukraine prohibits public incitement to commit terrorism, considering this crime committed via the use of media as more severe (Article 2582). Similarly, the Criminal Code prohibits the production and distribution of child pornography (Article 3011).</p> <p>***</p> <p>The Law on Media, under Article 36, prohibits the dissemination of, <i>inter alia</i>: statements that incite hatred, enmity or cruelty</p>	<p>Criminal Code of Ukraine (2001, last amended 13 April 2022), Articles 2582 and 3011</p>



General principle/ key value	Relevant provision/ provisions	References
incitement to terrorism	towards individuals or their groups, on the basis of nationality, race or religion (36 (2)); or that incite discrimination or harassment against individuals and their groups based on ethnic background, citizenship, race, religion and beliefs, age, sex, sexual orientation, gender identity, physical disabilities, health status or on other grounds (36 (3));; propaganda or appeals to terrorism and terrorist acts, materials or information justifying such actions (36 (4));; pornographic materials, including child pornography (36 (6));.	*** Law on Media (2022), Article 36 (paragraphs 2,3,4,6)

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

These first three principles: non-discrimination, the prohibition of incitement to hatred and violence, and the prohibition of criminal content are covered in the legislative framework under the Constitution (1996), the Law on the Principles of Preventing and Combating Discrimination, the Law on Information, the Law on Media and the Criminal Code. The Law on Media includes the prohibition of dissemination of criminal content such as provocation to commit a terrorist offence; child pornography; racism and xenophobia; incitement to terrorism. Further content that is prohibited includes, “information containing propaganda of the Russian totalitarian regime, armed aggression of the Russian Federation as a terrorist state against Ukraine, as well as symbols of the military invasion of the Russian totalitarian regime.” The recent Opinion of the Council of Europe noted a disparity between the personal characteristics protected with regard to discrimination, and those protected with regard to hate speech: “not all of the characteristics protected under Article 21 of the Charter of Fundamental Rights of the European Union are subject to the prohibition of hate speech. They are all subject to prohibitions of discrimination or harassment, but they should also be included for hate speech”.⁴⁰⁷

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

The table below indicates the framework for the protection of freedom of expression. It includes provisions from: the Constitution (1996), the Law on Information (1992), the Law on Television and Radio Broadcasting (1994), the Civil Code of Ukraine (2003), the Law on Printed Mass Media (Press) in Ukraine (1993), and also those of the new Media Law (2022).

⁴⁰⁷ CoE (February 23 2023): Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department on The Law on Media of Ukraine. Prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan



Table 167. Freedom of expression

General principle/ key value	Relevant provision/ provisions	References
Freedom of expression/ prohibition of censorship	Article 15 of the Constitution of Ukraine explicitly prohibits censorship, while Article 34 prescribes the right to freedom of expression.	Constitution of Ukraine (1996; 2020), Articles 15 and 34
Right to information/ Prohibition of censorship/ Freedom of the media	The Law on Information provides for the right to information subject to limitations for the sake of the rights of others and legitimate interests of citizens and legal entities (Article 5). Article 24 prohibits censorship of and interference with the professional activities of journalists and the media.	Law of Ukraine on Information (1992; 2022), Articles 5 and 24
Right to information/ freedom of creativity	The Civil Code of Ukraine provides for the right to information, which can be limited only in exceptional circumstances for the protection of national security, economic prosperity and human rights. Individuals disseminating information from official sources are not obliged to verify its authenticity. Additionally, the freedom of literary, artistic, scientific and technical creativity is protected from censorship.	Civil Code of Ukraine (2003, last amended 17 March 2022), Articles 302 and 309
Freedom of the press/ independence of the press/ prohibition of censorship	The Law on Printed Mass Media ensures the freedom of print mass media activities, prohibits censorship and interference by state authorities on either a financial or operational level; any demand for approval of any material is also prohibited.	Law of Ukraine on Printed Mass Media (Press) in Ukraine (1993, last amended 16 March 2022), Article 2
Media self-regulation/ freedom of the media/ Prohibition of censorship	The Law on Media aims to crystallise the rule on freedom of dissemination and reception of information, freedom of operation of subjects in the field of media, including free choice of content, and freedom of entrepreneurship. It also prohibits censorship and prescribes the three-fold test requirement for any limitation on free speech, ensuring compliance with the case law of the European Court of Human Rights (ECtHR).	Law on Media (2022), Article 4 Freedom of activity in the field of media

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

Freedom of expression, freedom of the media, independence of the media, and the prohibition of censorship are principles enshrined in an array of legislative acts, as can be seen in the table above. The new Law on Media refers specifically to the need for compliance with the case law of the ECtHR. According to the reports of Freedom House, in 2021 Ukraine was declared a partly free country with most cases of limitations on free speech being linked to Russian information operations, harming national security and



undermining the Ukrainian constitutional order.⁴⁰⁸ The United Nations (UN) Human Rights Monitoring Mission in Ukraine noted, however, that the impunity of perpetrators that violate the rights of journalists, the media, activists, minorities and the opposition might potentially lead to self-censorship by vulnerable groups.⁴⁰⁹

In August 2021, the OSCE Representative on Freedom of the Media (RFoM) expressed a particular concern regarding limitations on the resources of Russian media outlets. The RFoM stated that any sanctions on the media should be subject to careful scrutiny, accompanied by effective procedural safeguards to prevent undue interference.⁴¹⁰ This statement was made before the extension of Russian aggression and could be reviewed in light of the results of these limitations on Russian media and their resources, and the consequences which they failed to prevent. However, restricting Russian sources of information proved effective in protecting the Ukrainian information space from pro-Russian propaganda, despite people still being able to access such resources via circumventing tools, including Virtual Private Networks (VPNs).⁴¹¹ Following the extension of Russian aggression, the EU took a similar approach by banning Russian Sputnik and RT, recognising it as a necessary response to the intensification of armed activities in Ukraine and large-scale Russian disinformation campaigns promoting calls for war and the genocide of Ukrainians.⁴¹²

Another issue of contention concerns the blocking of Russian resources via the Decrees of the President of Ukraine. The list of relevant decrees is too numerous to include in this country report. An extensive analysis of the compatibility of such policies with international standards was carried out by DigitalSecurityLabUkraine.⁴¹³ In brief, the analysis concluded that Ukraine lacks a solid legislative basis for the blocking measures since the Law of Ukraine on Sanctions does not explicitly mention the possibility of blocking television channels and online resources sharing audiovisual content, thus making such penalties unpredictable. Additionally, a problem exists regarding the independent oversight of the blocking measures, since they are imposed not by the court or an independent authority, but via a Decree of the President of Ukraine.

The first review of the Draft Law on Media carried out by the Council of Europe experts also noted restrictions on propaganda “relating to the armed aggression” in

⁴⁰⁸ Freedom House (2021): Freedom in the World 2021: Ukraine:

<https://freedomhouse.org/country/ukraine/freedom-world/2021>.

⁴⁰⁹ Office of the High Commissioner for Human Rights (OHCHR) (2021): Civic Space and Fundamental Freedoms in Ukraine: <https://www.ohchr.org/sites/default/files/2021-12/UkraineCivicSpace2021-EN.pdf>.

⁴¹⁰ OSCE Media Freedom Representative comments August 2021: <https://www.osce.org/representative-on-freedom-of-media/496339>.

⁴¹¹ Golovchenko, Y. (2022): Fighting Propaganda with Censorship: A Study of the Ukrainian Ban on Russian Social Media. *The Journal of Politics*, Volume 84, Number 2. April 2022:

<https://www.journals.uchicago.edu/doi/10.1086/716949>.

⁴¹² See the statement by President von der Leyen on further measures to respond to the Russian invasion of Ukraine, 27 February 2022: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1441.

The EU also applied similar sanctions to three more Russian media – RTR Planeta, Rossiya 24 and TV Center International.

⁴¹³ This is an NGO specializing in media law, digital rights and digital security. The analysis was carried out by Ukrainian media lawyer Maksym Dvorovyi:

https://dslua.org/wp-content/uploads/2021/06/Sanctions_and_Internet_UPD_2.pdf.



audiovisual, print and online media entities (Articles 118-125). They expressed concern that these restrictions would extend for a period of 5 years after the end of the aggression. The recent Council of Europe Opinion on the final Law noted that this had been changed and hence these restrictions would be reviewed annually during this 5-year period. As noted above, the Opinion considers the restrictions to be in line with derogations permitted by Art. 10.2 and Art. 15 of the European Convention on Human Rights.⁴¹⁴

Another potential limitation to the freedom of the Ukrainian media linked to the war in Ukraine was introduced by a presidential decree which proposed

*[the] unification of all national TV channels, the programme content of which consists mainly of information and/or information-analytical programmes on a single information platform of strategic communication – a round-the-clock information marathon “United News #UArazom”.*⁴¹⁵

As this occurred during the first hours of the invasion, the question arose with regard to the identification of sources of information that could reflect the real and complete situation of what was happening. It became obvious that the circle of such sources is very limited – the General Staff of the Armed Forces of Ukraine, the Ministry of Defence, and the Office of the President. At the same time, entertainment programmes, which made up the vast majority of television broadcasting, became irrelevant. The decision to switch to a marathon mode ensured the unity of approaches, and in the following days, when many media actors had to deal with relocation issues, it also made it possible to ensure the continuity of broadcasting of all categories of broadcasters – from national to local. This media phenomenon was not related to the normal peace time but to the martial law in Ukraine. It is important to note that most channels have supported the idea of the common information marathon, providing a statement of public support.⁴¹⁶ In addition, the Adviser to the Office of the President of Ukraine ensured that no TV channels would be blocked for non-compliance with the presidential decree.⁴¹⁷ The National Council allowed deviation from the programme concept of the television channels during war time.⁴¹⁸

This issue and the debates related to the development of the new Law on Media have already been discussed in detail above under section 4.11.1.1. (Relevant framework: current status and developments). Concerns were raised regarding the aim of regulating online media. However, as numerous local experts have highlighted, the adoption of comprehensive legislation to address the problems of online content violations, the regulation of VSPs and updating the legislation on audiovisual media is crucial. This is particularly the case given the shift of communications to the online world, and the dangers to information security. An interesting overview of the approach in the new Law has been

⁴¹⁴ CoE (February 23 2023): Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department on The Law on Media of Ukraine. Prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan.

⁴¹⁵ Decree of the President of Ukraine No. 152/2022: <https://www.president.gov.ua/documents/1522022-41761>.

⁴¹⁶ <https://detector.media/infospace/article/197685/2022-03-20-pryamyy-i-5-kanal-doluchatsya-do-marafonu-iedyni-novyny/>.

⁴¹⁷ <https://www.pravda.com.ua/news/2022/03/20/7333000/>.

⁴¹⁸ <https://detector.media/rinok/article/196855/2022-02-24-natsrada-dozvolyla-kanalam-vidstupyty-vid-programnykh-kontseptsiy-na-chas-voienogo-stanu/>.



published online by the Ukrainian Centre for Democracy and Rule of Law.⁴¹⁹ As outlined in this explanatory article, online media registration will be mandatory. However, online media is still subject to the laws and the lack of registration will not protect it from sanctions.

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

The National Council of TV and Radio Broadcasting of Ukraine (National Council) was established in 1993, when the Law on Television and Radio Broadcasting entered into force. The National Council implements public policy on broadcasting licensing, is responsible for the rational use of the state radio frequency resource, participates in the implementation of public policy in the television and radio information sphere and exercises control over broadcaster compliance with licence terms and the current legislation. It is important to note that the National Council works closely with the Independent Media Council, a public advisory and expert body designed to promote high professional standards of journalism and self-regulation in the Ukrainian media sector.⁴²⁰ The National Council also works with the Ukrainian Journalism Organisation which has its own code of ethics.⁴²¹

Table 168. Independence of the National Regulatory Authority (NRA)

AVMSD and the independence of NRAs (Article 30)	In line with AVMSD	References
NRAs should be legally distinct from, and functionally independent of government	<p>Yes – aligned with the 2018 AVMSD in the Law.</p> <p>The National Council is a constitutional, permanent collegial body and a legal entity (Article 1).</p> <p>Article 3 states that the activities of the National Council are based, <i>inter alia</i>, on the principles of legality, independence, objectivity, transparency, accessibility to the public. The National Council cannot delegate its powers to third parties (Article 3(2)).</p> <p>***</p> <p>The Law on Media defines the National Council as an independent, permanent collegial state body acting on the basis of the Constitution of Ukraine and other laws of Ukraine, and exercising state regulation, supervision and control in the field of media (Articles 1 (33) and 70).</p>	<p>Law on the National Council of Ukraine on Television and Radio Broadcasting (1997; 2022),</p> <p>Articles 1 and 3(2)</p> <p>***</p> <p>Law on Media (2022), Articles 1 (33), 5 (14), 70 and 72</p>

⁴¹⁹ Centre for Democracy and Rule of Law (2023) Top 10 Novelties of the Media Law. <https://cedem.org.ua/en/analytcs/10-novelties-of-the-media-law/>

⁴²⁰ The Independent Media Council: <https://mediarada.org.ua/en/>.

⁴²¹ Code of Ethics of Ukrainian Journalists (24 April 2004, last edition 4 October 2013): <https://cje.org.ua/ethics-codex/>.



	<p>There is a specific article devoted to ensuring independence of the regulator, including protection from intervention by third parties (Article 72).</p> <p>Under Article 5, the “main tasks of state policy in the field of media” include, <i>inter alia</i>, the following: 14) ensuring effective guarantees of institutional and operational independence of the National Council.</p>	
NRAs should exercise their powers impartially and transparently	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The National Council bases its work on the principles of legality, independence, objectivity, transparency, accessibility to the public, consideration of social diversity, generally accepted international standards in the field of broadcasting, completeness and comprehensiveness (Article 3(1 and 2)).</p> <p>***</p> <p>The Law provides for the National Council to base its work on the principles of the rule of law, legality, independence, impartiality, professionalism, transparency and publicity (Article 71).</p>	<p>Law on National Council of Ukraine on Television and Radio Broadcasting (1997;2022), Article 3(1 and 2)</p> <p>***</p> <p>Law on Media (2022), Articles 71</p>
Clear definition of the competences and powers of the NRAs outlined in the law	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Section III outlines the competences of the National Council, including supervisory powers (Article 13), regulatory powers (Article 14), organisational and strategic competences (Article 15).</p> <p>***</p> <p>The Law on Media has similar provisions under Section VI, Articles 90-91.</p>	<p>Law on National Council of Ukraine on Television and Radio Broadcasting (1997;2022), Section III, Articles 13, 14 and 15</p> <p>***</p> <p>Law on Media (2022), Section VI, Articles 90-91</p>
NRAs should have adequate financial and human resources and enforcement powers to carry out their functions, and have their own budgets	<p>Partly aligned with the 2018 AVMSD.</p> <p>The National Council is funded from the state budget, allowing for separate budget lines in relation to certain spheres of activity. The proceeds from licensing go to the state budget. Hence, the NRA does not have its own budget. The extent to which it is adequately financed is unclear.</p> <p>***</p> <p>Yes – closely aligned with the 2018 AVMSD in the newLaw.</p> <p>The National Council is still funded from the state budget. Article 89 states that the state shall ensure the adequate financing of the activities of the National Council, which shall ensure its independence. Financing shall be specified in a separate line in the State Budget of Ukraine, and shall comprise not less than 0.022% of income of the General State Budget Fund of Ukraine for the previous year. The proceeds from licensing and registration now</p>	<p>Law of Ukraine on National Council of Ukraine on Television and Radio Broadcasting (1997;2022), Articles 25 (1 and 2)</p> <p>***</p> <p>Law on Media (2022) Article 89</p>



	<p>go to a special fund of the National Council assigned to specific tasks (Article 89).</p> <p>The law allows for the possibility of being financed by other sources, such as international technical assistance funds.</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 – aligned with the 2018 AVMSD.</p> <p>The Constitution of Ukraine outlines the procedure for the appointment of the National Council. It is composed of four members appointed by the parliament and four members appointed by the President of Ukraine (Articles 85 and 106).</p> <p>***</p> <p>Article 5 deals with the procedure for the appointment of four candidates by the parliament (nominated by members of parliament, and also by a range of civil society and professional organisations). Article 6 covers the procedure for appointment of four candidates by the president.</p> <p>Article 7 details the requirements to be a member of the National Council, and the rights and responsibilities of members. Article 8 covers the issue of termination of members (and of the chairman of the national Council), including the following cases where they can be dismissed: resignation; loss of citizenship; conflicts of interest; long-term illness; failure to perform duties; criminal conviction, etc. Article 9 outlines the appointment of the chairman of the National Council, elected from among the members of the National Council by secret ballot.</p> <p>***</p> <p>The Law on Media contains relevant provisions under Articles 73-77 which cover the composition of the National Council, the qualifications and eligibility required to be on the National Council, and the procedure for election and appointment. Procedures for appointment and dismissal of the chairman of the Council are covered under Articles 80-81.</p> <p>***</p> <p>In addition, in June 2021, the government adopted the Law of Ukraine No. 4107 on Ensuring the Independence of the National Council of Ukraine on Television and Radio Broadcasting. This law further regulates the procedures for election and appointment of members of the National Council.</p>	<p>Constitution of Ukraine (1996, last amended 1 January 2020), Articles 85 and 106</p> <p>***</p> <p>Law of Ukraine on National Council of Ukraine on Television and Radio Broadcasting (1997, last amended 1 January 2022), Articles 5, 6, 7, 8 and 9</p> <p>***</p> <p>Law on Media (2022) Articles 73-77 and 80-81</p> <p>***</p> <p>Law of Ukraine No. 4107 on Ensuring the Independence of the National Council of Ukraine on Television and Radio Broadcasting</p>



Existence of effective and independent appeal mechanisms	Yes – aligned with the 2018 AVMSD. The Law provides for the right to appeal decisions of the National Council in court (Article 87 (16)).	Law on Media (2022), Article 87 (16)
Provisions in the law that support cooperation between NRAs	Yes – aligned with the 2018 AVMSD.	Law on Media (2022), Article 90 (40)

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

The summary above shows that the law is closely aligned with the 2018 AVMS Directive with regard to independence of the NRA. The new Law on Media strengthened some of these provisions, for example it emphasised that the state shall ensure the adequate financing of the activities of the National Council, which shall ensure its independence.

In the context of the discussions during the development of draft laws, the representative of the Council of Europe stressed the need to ensure the political independence of the National Council members, and the absence of any political affiliation that could impact on their decisions.⁴²² The same issue had been raised several times in the past in reports by local and international institutions.⁴²³ An important development was the adoption by the government in June 2021 of the “Law of Ukraine on Ensuring the Independence of the National Council of Ukraine on Television and Radio Broadcasting”. This law aims to fulfil international obligations to implement in national legislation the provisions of the 2018 AVMS Directive in terms of ensuring the independence of the state regulator in the field of broadcasting. The purpose of the Law was to develop an effective procedure for appointing and terminating the powers of members of the National Council, as the previous procedure could not fully guarantee the principle of independence, and the effective and transparent mechanisms of the state regulator.⁴²⁴ The recent Council of Europe Opinion noted that it was “commendable that the Law has been adopted with a process that requires the President to select new members from a shortlist that has been proposed by media NGOs and unions, and vetted by an appointed five-person Commission which organises the application process and considers the nominations”.⁴²⁵

4.11.2.3. 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 are examined in relation to obligations: on

⁴²² <https://cutt.ly/xGhenw7>.

⁴²³ See, Council of Europe (2016): Institutional Mapping Analysis in Sphere of Information Policy and Media in Ukraine: <https://rm.coe.int/16806a9509>. See also Freedom House (2013): One step forward, one step back: <https://cutt.ly/iGhoJGI>. See also 2016 statements of the Independent Media Council: <https://mediarada.org.ua/en/recommendations/audiovisual-content-regulation>.

⁴²⁴ <https://www.rada.gov.ua/en/news/News/210548.html>.

⁴²⁵ CoE (February 23 2023): Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department on The Law on Media of Ukraine. Prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan.



audiovisual media services to protect minors from harmful content; with regard to protecting minors from harm in the context of ACCs; regarding prohibited/restricted advertising.

Table 169. Protection of minors

AVMSD and the protection of minors	In line with AVMSD	References
Obligations to protect minors from harmful content, via watershed/scheduling, age verification tools or other technical measures	<p>Yes – aligned with the 2018 AVMSD regarding harmful content.</p> <p>Article 42 of the Law on Media outlines in detail the types of content considered to be harmful to the physical, mental or moral development of children.</p> <p>The law provides a detailed limitation on content, according to categorisation of content and age limits. Reference is made to schedules, watershed, warnings, conditional access, and parental controls.</p>	Law on Media (2022), Article 42
Prohibition of commercial use of personal data of minors collected when implementing these measures	<p>Yes – aligned with the 2018 AVMSD</p> <p>in the Law in relation to entities in the field of audiovisual media (Article 21 (6)) and in relation to VSPs (Article 23 (2)).</p> <p>***</p> <p>Yes – aligned with the 2018 AVMSD in the Law on Advertising</p>	<p>Law on Media (2022), Article 21 (6)</p> <p>Article 23 (2)</p> <p>***</p> <p>Law of Ukraine on Advertising 1996 (amended 30 May 2023), Article 13 (10)</p>
Informing viewers about potentially harmful content (content rating systems, visual or acoustic signals)	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Law requires that warnings and labels are used in programme schedules or catalogues. Such labels/ symbols should be used immediately before their transmission, and also be displayed throughout the programme. Audible warnings regarding harmful content are also required (Article 42).</p> <p>***</p> <p>The 2016 Decision of the National Council deals with the system of visual and audio symbols.</p>	<p>Law on Media (2022), Article 42</p> <p>***</p> <p>Decision of the National Council on changes to the system of visual markings with the index of film and video production depending on the intended audience (10 March 2016)</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	<p>Yes – aligned with the 2018 AVMSD.</p> <p>The Law on Advertising prohibits advertising of all tobacco products in audiovisual media.</p>	<p>Law on Advertising (1996; 2022; 2023), Article 22</p> <p>***</p> <p>The Law on Measures to Prevent</p>



minors to ACCs for alcoholic beverages	The law also prohibits the advertising of alcohol between 6am and 11pm. *** The Law on Measures to Prevent and Reduce the Use of Tobacco Products and Their Harmful Effects on Public Health completely prohibited advertising, promotion and sponsorship related to tobacco products.	and Reduce the Use of Tobacco Products and their Harmful Effects on Public Health (2005; 2022), Article 16
Requirement that ACCs shall not cause physical, mental or moral detriment to minors	Yes – aligned with the 2018 AVMSD.	Law on Advertising (1996; 2022; 2023), Articles 5, 7 and 20
Effectively reduce the exposure of children to ACCs for such foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	Yes – aligned with the 2018 AVMSD. Article 31 introduces the concepts of co-regulation and self-regulation. Audiovisual media services and VSPs required to reduce exposure of children to such foods via self-regulation.	As above Article 31
Prohibiting of product placement in children's programmes	Yes – aligned with the 2018 AVMSD. Article 52 prohibits product placement in news programmes, current affairs programmes, consumer protection programmes, religious and children's programmes	As above Article 52

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

As can be seen from the above, the national legislation is aligned with the 2018 AVMS Directive with regard to protecting minors from harmful content, and protecting minors from harm in relation to ACCs. The Parliament passed a new Law amending the Law on Advertising on 30 May 2023, which included additional provisions such as the requirement to effectively reduce exposure of children to ACCs for HFSS foods, and the prohibition of product placement in children's' programmes. The prohibition of commercial use of personal data of minors is addressed in the amended Law on Advertising (2023) and in the new Law on Media (2022).

Although the advertising of tobacco products was prohibited by the “Law on measures to prevent and reduce the use of tobacco products and their harmful effects on public health”, it would appear that this law is not well enforced, as there continues to be a circulation of illegal advertisements.⁴²⁶ The 2018 Centre of Public Health's research shows that 60% of young people are exposed to tobacco advertising.⁴²⁷ The recently amended Law on Advertising added e-cigarettes to the list of goods for which advertising is prohibited. The Draft Law on Personal Data Protection (Article 43) proposes the development of a code of conduct on personal data protection, which covers the procedure for protecting children

⁴²⁶ <https://cedem.org.ua/news/zaborona-vykladky-sygaret-zahystyt-ditej-vid-reklamy-tyutyunu-eksperty/>.

⁴²⁷ <https://phc.org.ua/news/60-molodi-bachit-reklamu-sigaret-v-ukraini>



as subjects of personal data and providing information, as well as the method of obtaining consent from parents or guardians regarding processing personal data of young children.⁴²⁸

One concern regarding the protection of minors relates to their participation in the media, whereby there have been instances of the media revealing personal information or depicting children in circumstances that undermine their dignity.⁴²⁹ The issue of the protection of the rights of the child in the context of media reporting and programming has been addressed by the members of the Commission of Journalism Ethics, where they stressed the need for caution when addressing issues related to children in the media.⁴³⁰ The National Council established working groups to draft rules on the protection of children in the media⁴³¹ in relation to: the protection of children in times of armed conflict; media reporting on sexual violence experienced by children; reporting on topics related to suicide; reporting on cases of violence and cruelty; and reporting on cases of bullying. The Independent Media Council has also made recommendations on the coverage of crime stories and reporting crimes.⁴³²

There are a significant number of initiatives in the area of media and information literacy (MIL). These are implemented on different levels, from school education to the promotion of responsible information consumption by adults. The online platform of the National Media Literacy Project “Filter” was created by the Ministry of Culture and Information Policy of Ukraine.⁴³³ This project collects the best educational materials and resources on media education for teachers, students, parents and journalists. They include both literature and games, video blogs, exercises, video courses, etc. In partnership with the Swedish Institute, Filter adapted and disseminated “Fake not Fact” media literacy training materials as part of the Civic Education course in Ukrainian schools.⁴³⁴

The Ministry of Digital Transformation of Ukraine together with UNICEF created an online series on media and digital literacy, educating children on how to behave online, how to identify disinformation and filter information materials.⁴³⁵ Civil society also promotes media literacy initiatives. For example, the NGO Detector Media supports the project Media Sapiens⁴³⁶ devoted to fact-checking, while the Stopfake project shares

⁴²⁸ This Code of conduct will serve as a self-regulatory initiative at the level of self-regulatory bodies, enterprises and organisations: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72160. Also, the Code of Ethics of Ukrainian Journalists (<https://cje.org.ua/ethics-codex/>) addresses the issue of protecting minors, in relation to personal information, privacy, parental consent, etc. in the context of participation in the media.

⁴²⁹ <https://www.nrada.gov.ua/prava-ditej-i-telebachennya-yak-zahyshhaty-a-ne-porushuvat/>.

⁴³⁰ https://www.youtube.com/watch?v=cD3-OpM9_BM&t=1s.

⁴³¹ <https://www.nrada.gov.ua/vidbulosya-obgovorennya-samoregulivnogo-dokumenta/>.

⁴³² <https://mediarada.org.ua/recommendations/rekomendatsiya-schodo-povnovazhen-natsrady-u-sferi-rehulyuvannya-audiovizualnoho-kontentu/>.

⁴³³ <https://filter.mkip.gov.ua/>. The Filter analytical report on the state of media literacy in Ukraine is available at: <https://filter.mkip.gov.ua/pro-nas/>.

⁴³⁴ <https://filter.mkip.gov.ua/uchytelyam-ta-uchnyam/>.

⁴³⁵ <https://thedigital.gov.ua/news/mediagramotnist-u-chasi-pandemii-noviy-osvitniy-serial-mintsifri-ta-yunisef-v-ukraini>.

⁴³⁶ <https://ms.detector.media/>.



various fact-checking materials on political and social issues.⁴³⁷ There are numerous online courses devoted to countering disinformation and promoting media literacy.⁴³⁸

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

The 2018 AVMS Directive strengthens the obligations for audiovisual media service 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”. The table below outlines the framework in Ukraine.

Table 170. 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	<p>The Law on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine requires the inclusion of sign language and subtitling into official announcements, films, videos and programmes on all broadcasters – under conditions to be determined by the Cabinet of Ministers of Ukraine.</p> <p>***</p> <p>Yes aligned with the 2018 AVMSD.</p> <p>The new Law addresses the issue of accessibility under Articles 90 and 92.</p> <p>Article 90 (paragraph 50) under the Powers of the National Council, includes the requirement that the Council shall: together with the co-regulatory body, develop and approve the action plan for ensuring accessibility of services for persons with disabilities.</p> <p>Article 92 also addresses the development of co-regulation in this area.</p>	<p>Law of Ukraine on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine (1991; 2022), Article 23</p> <p>***</p> <p>Law on Media (2022), Article 90 (50) and Article 92 (2 . 10)</p>
Audiovisual media service providers should report on this to the NRAs. AVMS providers are encouraged to develop action plans in this area and should communicate these to the NRAs	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Every three years, audiovisual media entities (except audio media entities) shall submit a report to the National Council on ensuring the accessibility of</p>	<p>Law on Media (2022), Articles 49 (2) and Article 92 (2. 10)</p>

⁴³⁷ <https://www.stopfake.org/uk/golovna/>.

⁴³⁸ https://courses.prometheus.org.ua/courses/course-v1:CZ+MEDIA102+2018_T3/about.



	<p>their services for persons with disabilities (Article 49 (3)).</p> <p>The co-regulatory structure should include a system for approval of the action plan for ensuring accessibility of services for persons with disabilities Article 92 (2. 10)</p>	
States should provide a public online point of contact for providing information and receiving complaints	<p>Yes – aligned with the 2018 AVMSD.</p> <p>Users have the right to submit appeals regarding the accessibility of services provided by audiovisual media entities for persons with disabilities.</p> <p>Article 90 under the Powers of the National Council, includes the requirement that the Council shall: 58) create an effective mechanism on its website for submitting appeals regarding the accessibility of services provided by audiovisual media entities for persons with disabilities.</p>	<p>Law on Media (2022), Article 49 (1) and Article 90 (58)</p>
Emergency information should be in accessible formats	<p>Possibly aligned in the new Law, as Article 13 (7) requires state broadcasters to provide subtitling and/or translation into Ukrainian sign language of official announcements. This could be interpreted to include emergency information.</p>	<p>Law on Media (2022), Article 13</p>

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

Before the adoption of the new Law, there were no actual measurable obligations for services. Broadcasters were obliged to provide sign language and sub-titling but with no indications of amount or percentages of programming. Ukrainian civil society organisations have repeatedly stressed a need to increase the percentage of sign language interpretation in television and radio broadcasting.⁴³⁹ However, despite the declared goal of having 50% of content interpreted into sign language and subtitled by 2020, a strict requirement in the law regarding the amount and types of adapted materials is still lacking.

The new Law does not introduce any precise obligations on audiovisual media service providers in this area. However, the law stipulates that the National Council, together with AVMS providers, will develop a co-regulatory system regarding accessibility, which includes the approval of action plans for the services in this area. In addition, audiovisual media services are required to report to the National Council on their progress in this field every three years. The National Council should create an effective mechanism

⁴³⁹ <https://helsinki.org.ua/en/rights-of-people-with-disabilities/>.



on its website for users to submit appeals (presumably complaints) regarding the accessibility of services.

Several initiatives in this sphere have been discontinued due to lack of funding and support from the state, for example, one TV channel “TV-Deaf” for individuals with hearing disabilities established in 2015 has closed.⁴⁴⁰ Similarly, the plans of the Public Broadcaster to translate all programs into sign language from 2018 failed due to lack of finances and human resources.⁴⁴¹

The government approved the National Strategy for Creating a Barrier-Free Space in Ukraine by 2030.⁴⁴² In relation to audiovisual media services, it proposed to outline the procedure and conditions for media services to provide subtitling or sign language translation; encourage the use of these formats and also audio description, etc. and develop regulation in this area.

The National Council has launched initiatives for the sharing of content.⁴⁴³ It continues to promote these initiatives among other broadcasters. In addition, the Supervisory Council of the National Council is partly composed of representatives of the civic society, including those representing people with special needs.⁴⁴⁴ A Handbook on Freedom from Barriers was launched by the First Lady of Ukraine, extensively addressing the issues of accessibility of different services and the necessity to ensure the equal and free participation of all individuals in social life.⁴⁴⁵ This initiative is also used by the National Council in policy-making processes aimed at ensuring the accessibility of media services.

4.11.2.5. 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 AVMSD requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The table below outlines the national legislative framework in this area.

Table 171. Transparency of media ownership

AVMSD and transparency of media ownership	In line with AVMSD	References
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⁴⁴⁰ <https://rcpio.ippo.kubg.edu.ua/?p=1285>.

⁴⁴¹ <https://cutt.ly/eGzo90N>.

⁴⁴² The Government has approved an Action Plan for 2021-2022 under the mentioned Strategy (<https://zakon.rada.gov.ua/laws/show/883-2021-%D1%80#n12>), providing for the development of methodical recommendations for media, the adoption of the standards in the areas of inclusivity, sign language and audiodescription, drafting the law on audiodescription and relevant bylaw documents, etc.: <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text>.

⁴⁴³ <https://www.nrada.gov.ua/wp-content/uploads/2021/02/SHHorichnyi-zvit-AT-NSTU-2020.pdf>.

⁴⁴⁴ <https://www.nrada.gov.ua/uchasti-v-konferentsiyah-z-obrannya-chleniv-naglyadovoyi-rady-nstu-v-p-yatyv-suspilnyh-sferah-dopushheno-79-gromadskyh-ob-yednan-asotsiatsij/>.

⁴⁴⁵ <https://bf.in.ua/>.



Requirement for AVMS providers to provide publicly accessible information on the following: its name; the address at which it is established; the email address or website; the state having jurisdiction over it and the competent NRA	Yes – aligned with the 2018 AVMSD in the new Law on Media. It also adds the requirement to publish information about the subject, including its full name, postal address, telephone number, email address, identifier of the media in the register on its website (if any). The non-linear media are required to publish on their website the relevant identification information.	Law on Media (2022), Article 37
Possibility to also require AVMS providers to make accessible information on their ownership structures.	Yes – aligned with the 2018 AVMSD. The Law on Media requires transparency of ownership structures (Article 25). Article 26 requires the publication of this information. Article 27 details compliance with these requirements including documents that must be delivered to the National Council. Transparency of ownership requirements do not apply to public media and organisations owned by (in brief): state authorities; state authorities of foreign states; civil society organisations; political parties; religious organisations; trade unions, artistic unions; employers' organisations; chambers of commerce; international organisations.	Law on Media (2020), Article Articles 25-27
Requirement for states to establish and maintain up-to-date lists of the national AVMS providers	Yes – aligned with the 2018 AVMSD. The new Law provides for the creation of the register of subjects in the field of media with all relevant information provided (Article 68). The register shall include data on all licensed or registered services, as well as on all registered foreign linear media. This should be freely available to the public.	Law on Media (2022), Article 68

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

From the table above, it is apparent that the rules regarding transparency of media ownership align with those of the 2018 AVMSD. In addition, there are also strong provisions requiring details of ownership from audiovisual media services. The new Law on Media, under Article 27, outlines the range of ownership information that should be reported in order to consider a media service as having ownership transparency.

Several experts note obstacles to implementation, including the lack of powers at the National Council,⁴⁴⁶ the question of offshore companies, and the need to establish a special regulation on media ownership.⁴⁴⁷ The use of offshore companies and the lack of identity of end beneficiaries (for instance, documents mention numerous legal entities

⁴⁴⁶ For example, the Media Ownership Monitors stressed the lack of enforcement mechanisms and capacity of the National Regulator to control transparency: <https://www.mom-rsf.org/en/countries/ukraine/>.

⁴⁴⁷ <https://ms.detector.media/zakonodavstvo/post/14154/2015-09-10-zakon-pro-prozorist-mediavlasnosti-chy-diznaiemosya-khto-komu-rabinovych/>.



instead of physical persons) in the schemes of ownership are the most popular ways of overcoming the transparency requirements.⁴⁴⁸ For example, the research of the Institute of Mass Information⁴⁴⁹ has demonstrated that the influence of oligarchs remains strong despite the formal changes in the ownership structure. At the same time, influential owners are still frequently based offshore.⁴⁵⁰ Regarding media concentration rules, the current legislation does not establish definite criteria for establishing the concentration of media in the hands of one individual or organisation within the media market, as only media groups having more than 30% of the media market are considered to be such a concentration. Since no groups reach this threshold, there is a need to scrutinise the control by end beneficiaries via the adoption of the new law.

There is a particular problem with online media, which are not obliged to disclose their ownership structure, yet they remain powerful tools for hidden political advertising and propaganda.⁴⁵¹ However, as noted above the registration of online media in a voluntary capacity is included in the new Law on Media. Registered entities will be expected to transmit ownership information to the National Council.

4.11.3. Promotion of European works

One of the key aims of the AVMS Directive is the promotion of European works, achieved by placing quota requirements on broadcasters (Article 16) and requirements on broadcasters that support the independent production sector (Article 17). Relevant definitions were examined above (section 4.11.1.2). The tables below outline the extent to which the national framework aligns with the obligations as outlined in the 2018 AVMS Directive.

Table 172. 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 2018 AVMSD in the new Law. The requirement is that 50% of content should be European works.	Law on Media (2022), Article 39 (1)

⁴⁴⁸ <https://cedem.org.ua/analytics/vlasnist-media-dumky/>.

⁴⁴⁹ The Institute of Mass Information (IMI) is an independent, non-profit, non-governmental organisation, which has been working in the public sector since 1995 and implementing projects aimed at boosting the positive impact of the media on the establishment of civil society in Ukraine: <https://imi.org.ua/en/about>.

⁴⁵⁰ Reporters Without Borders (2017): Media Ownership in Ukraine: informal influence through murky business schemes: <https://rsf.org/en/media-ownership-ukraine-informal-influence-through-murky-business-schemes>.

⁴⁵¹ Chatham House (2021): Strengthening public interest in Ukraine's media sector: <https://www.chathamhouse.org/2021/04/strengthening-public-interest-ukraines-media-sector/02-ukraines-media-landscape>.



Exceptions to this rule	<p>The rules refer to TV channels of national and regional categories, except for foreign linear media.</p> <p>The totals should not take into account: news, the broadcast of sports events and games, advertising or teleshopping.</p> <p>For TV channels of national and regional categories that have an insignificant share of the audience, requirements for the amount of European programmes shall be determined by the National Council together with the co-regulatory body – the Independent Media Council.</p>	Law on Media (2022), Article 39 (1)
Rules where a minimum percentage (for example 10%) of content broadcast (or of programme budgets) should be European works created by producers who are independent of broadcasters	Yes – aligned with the 2018 AVMSD in the new Law.	Law on Media (2022), Article 39 (3)

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

As can be seen above, with the adoption of the new Law on Media, the national legislative framework aligns with the 2018 AVMS Directive regarding linear services. Obligations for non-linear on-demand audiovisual services regarding the promotion of European works are examined below.

Table 173. Promotion of European works on on-demand audiovisual services

AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD	References
Requirement that media service providers of on-demand AVMS secure at least a 30% share of European works in their catalogues and ensure prominence of those works	Yes – aligned with the 2018 AVMSD in new law.	Law on Media (2022), Article 39 (2)
Exemptions for AVMS providers with a low turnover or a low audience?	Not mentioned.	
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?	Not mentioned.	
Inclusion of any financial contribution obligations for services targeting the country?	Not mentioned.	

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



The new Law on Media (2022) updates the obligations in respect of European works to include those for on-demand services. It is not clear whether exemptions will be provided for AVMS providers with a low turnover, or a low audience.

The National Council, in 2017, carried out an audit on compliance with the requirements in terms of the percentage of Ukrainian and European works as established by the Law on Television and Radio Broadcasting.⁴⁵² According to the summary, in 2017-2018, 93% of the national TV channels complied with the quotas on European works. The inspection of the Inter Media Group, however, confirmed that the latter did not comply with said quotas. Subsequently, the Inter Media Group initiated court proceedings against the National Council, claiming that it did comply with quotas since TV programmes do not cover the notion of films, thus broadcasters are not obliged to apply the quota rule to cinematography. The appeal body supported the applicants' position, stating that films are exempted from the notion of TV programmes, and thus are not covered by quotas. Accordingly, the requirements in respect of European works were partly narrowed in terms of the scope of their application, which could also lead to a decrease in sponsorship of film production since the National Council can only sponsor programmes. The National Council has stated that monitoring of compliance with the quota requirements is difficult due to the lack of human resources, coupled with a lack of effective sanction mechanisms.⁴⁵³ It is only possible to warn channels, while verification of compliance is done only via official audit.

The National Council has also prepared an Explanatory Guide on the implementation of quotas on Ukrainian and European works.⁴⁵⁴ This Guide was subject to certain amendments following the court proceedings (mentioned above).

The notions of low audience were addressed in the Law on Media regarding linear services only.

4.11.4. Rules on audiovisual commercial communications

This section looks at the rules on 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. The Law on Advertising (1996; 2022) is the relevant source for legislation in this field.

Table 174. Audiovisual commercial communications (ACCs)

AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD	References
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⁴⁵² <https://detector.media/rinok/article/129446/2017-08-31-natsrada-pokarala-grupu-inter-infografika/>

⁴⁵³ <https://glavcom.ua/interviews/viktoriya-syumar-mayzhe-vsi-vlasniki-velikih-telekanaliv-domovilisya-z-vladoyu-652899.html>

⁴⁵⁴ <https://detector.media/infospace/article/120307/2016-11-04-rozysnennya-natsrady-pro-novi-kvoty-ievropeyskogo-produktu-y-ukrainskykh-pisen-ta-yak-regulyator-ikh-kontrolyuvatyme/>



ACC should be recognisable. Surreptitious ACC shall be prohibited and ACC shall not use subliminal techniques	Yes – aligned with the 2018 AVMSD. Article 9 requires identification of ACCs, prohibits surreptitious advertising and hidden/subliminal ACC.	Law on Advertising (1996; 2022; 2023), Article 9
ACC shall not prejudice respect for human dignity; promote discrimination; encourage behaviour prejudicial to health or safety; or encourage behaviour grossly prejudicial to protection of the environment	Yes – aligned with the 2018 AVMSD. Prohibits ACCs that promote discrimination; that may cause damage to people's health or life and/or the environment, as well as general safety; and that degrade human dignity.	As above, Article 8
ACC for the prescription of medicinal products and medical treatment shall be prohibited	Yes – aligned with the 2018 AVMSD.	As above, Article 21
Rules on sponsorship – types of programmes where prohibited – and types of goods and services that cannot sponsor	Yes – aligned with the 2018 AVMSD. Sponsorship is prohibited in news and current affairs. Sponsorship is prohibited for goods whose advertising is prohibited by law or whose production and/or circulation is prohibited by law. The prohibition of sponsorship extends to tobacco products and alcoholic beverages. *** This law also contains a separate provision on prohibition of advertising, promotion and sponsorship of tobacco products.	As above, Articles 5 and 22 *** The Law on Measures to Prevent and Reduce the Use of Tobacco Products and their Harmful Effects on Public Health (2005, last amended 13 March 2022), Article 16 (no official English text available)
No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes	Yes – aligned with the 2018 AVMSD.	Law on Advertising (1996; 2022; 2023), Article 52 (1)
PP should not affect the responsibility and editorial independence of the media service provider; directly encourage purchase or rental of the product; give undue prominence to the product	Yes – aligned with the 2018 AVMSD.	As above, Article 52 (2)



Viewers shall be clearly informed of the existence of product placement in a programme	Yes – aligned with the 2018 AVMSD.	As above, Article 52 (2)
Limiting the proportion of television advertising spots/teleshopping spots throughout the day, or during particular time periods?	Yes – aligned with the 2018 AVMSD. On television, advertising time shall not exceed 20% in the period 6am to 6pm and the period 6pm to 12am.	Law on Advertising (1996; 2022; 2023), Article 13
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	Yes – aligned with the 2018 AVMSD. Exceptions are self-promotion, sponsorship, product placement and free social advertising (public interest).	As above, Article 13

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

The legal framework in ACCs is now aligned with the 2018 AVMSD, following the amendments to the Law on Advertising (1996; 2022; 2023).

From the reports of the National Council, it is apparent that time limits for advertising are frequently violated.⁴⁵⁵ In addition, there are frequent content issues regarding stereotypes and gender imbalance.⁴⁵⁶ One structural problem in the area of advertising is a lack of powers and human resources at the National Council to systemically address the issue of unlawful advertising.⁴⁵⁷ At the same time, any legislative changes face significant opposition from the business sector, as was the case with restrictions on the advertising of medical products.⁴⁵⁸ Similar debates within the business lobbies address the rules on the advertising of tobacco products. The absence of effective enforcement from both legal and technical perspectives is a challenge for the implementation of rules.

The National Council works to ensure clarity of understanding of the various rules and obligations. The Council frequently publishes explanatory notes regarding the legislative changes in the advertising sphere, as for example changes regarding Ukrainian language requirements in advertising.⁴⁵⁹ Explanatory notes and guidelines were provided on the notion of social advertising,⁴⁶⁰ and recommendations were developed with regard to sponsorship.⁴⁶¹ In addition, the National Council has developed a Memorandum on the advertising of gambling and gambling organisations, which is open for signatures and shared by the National Council for all subjects in the media sphere to join.⁴⁶²

⁴⁵⁵ <https://www.nrada.gov.ua/telekompaniyi-kyiv-ogolosheno-poperedzhennya-cherez-porushennya-reklamnogo-zakonodavstva/>.

⁴⁵⁶ <https://cutt.ly/OGYUZmA>.

⁴⁵⁷ Detector Media (2017): <https://detector.media/rinok/article/132925/2017-12-15-natsrada-ne-karaie-movnykiv-za-dzhynsu-bo-iy-brakuie-povnovazhen/>.

⁴⁵⁸ BBC News Ukraine (2018): <https://www.bbc.com/ukrainian/features-44141930>.

⁴⁵⁹ <https://www.nrada.gov.ua/iz-16-sichnya-vsya-reklama-v-ukrayini-maye-buty-vykonana-derzhavnoyu-movoyu/>.

⁴⁶⁰ <https://www.nrada.gov.ua/shhodo-vidnesennya-reklamnyh-rolykiv-sotsialnyh/>.

⁴⁶¹ <https://cutt.ly/dGYEUss>.

⁴⁶² <https://cutt.ly/pGYT55v>.



The Independent Media Council also drafts recommendations in the area. This includes how to write about businesses without using hidden advertising (infomercials), a guide actively used by all stakeholders, including the National Council.⁴⁶³

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

An important novelty of the 2018 AVMS Directive was expanding its scope to include VSPs. The relevant definitions in this area were addressed in section 4.11.1.2 above. The establishment of the jurisdiction of VSPs was covered under section 4.11.1.3 above.

Table 175. Obligations on video-sharing platforms regarding content

AVMSD and provisions on VSPs (Article 28b)	In line with the 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 new Law. VSPs are required to restrict content that may cause significant harm to the physical, mental or moral development of children (Article 42). VSPs are obliged to prohibit content that breaches Article 36 of the Law. This includes, <i>inter alia</i> : content that incites hostility or hatred; statements that incite discrimination; incitement to terrorism; pornographic materials and child pornography (Article 23).	Law on Media (2022), Articles 42, 23 and 36
VSP providers need to comply with the obligations (Article 9(1)) for ACCs they control (market, sell or arrange), and those controlled and uploaded by others	Yes – closely aligned with the 2018 AVMSD in the new Law. Under Article 23 (2), VSPs must provide in the terms of use of the video-sharing platform service a ban on advertising that violates the law.	Law on Media (2022), Articles 23 (2)
VSPs should clearly inform users where programmes and user-generated videos contain ACC	Under Article 23 (6), VSPs must include and implement in the terms of use of the video-sharing platform service the requirements for the distribution of advertising information established by law, as well as provide users with the opportunity to indicate whether their user video contains advertising information;	Law on Media (2022), Articles 23 (6)

⁴⁶³ <https://mediarada.org.ua/recommendations/rekomendatsiya-13-yak-pysaty-pro-biznes-tak-schob-tse-ne-bulo-reklamoyu/>.



VSPs should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	<p>Yes – aligned with the 2018 AVMSD in the newly amended Advertising Law.</p> <p>Article 31 introduces the concepts of co-regulation and self-regulation.</p> <p>Audiovisual media services and VSPs required to reduce exposure of children to such foods via self-regulation.</p>	Law on Advertising (1996; 2022; 2023), Articles 31
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Source: Response of national expert of Ukraine to European Audiovisual Observatory standardised survey

The Law on Media includes VSPs in its scope. As can be seen above, the obligation to protect children and the general public from harmful and illegal content is included in the provision. Several of the obligations and measures outlined in the Directive have also been included. The Parliament adopted amendments to the Law on Advertising on 30 May 2023, which addressed additional obligations such as the measures to reduce the exposure of children to ACCs for HFSS foods.

Table 176. Obligations on video-sharing platforms – measures and supervision

AVMSD and provisions on VSPs (Article 28b) Measures introduced by national rules?	In line with AVMSD	References
Adapting Terms and Conditions for users of VSPs to include obligations relevant to content and/or ACCs	<p>Yes – aligned with 2018 AVMSD in the new Law. The terms of use of a VSP service should prohibit content that breaches Article 36 of the Law. This includes, <i>inter alia</i>: content that incites hostility or hatred; statements that incite discrimination; incitement to terrorism; pornographic materials and child pornography (Article 23 (1.2)).</p> <p>The terms of use should be available on the platform and users should be made aware of them (Articles 23 (1.1)).</p>	Law on Media (2022), Articles 23 and 36
Possibility to declare the presence of ACCs in user-generated video	Yes – aligned with 2018 AVMSD in the new Law and the amended Law on Advertising	<p>Law on Media (2022), Articles 23 (6)</p> <p>Law on Advertising (1996; 2022; 2023), Articles 142 (3)</p>
Reporting or flagging systems to report harmful content to the VSP provider	Not specifically mentioned except in regard to complaints – for informing the VSP regarding harmful content, see below.	Law on Media (2022), Article 23 23 (1.4)



Age verification systems for users	Yes – aligned with 2018 AVMSD in Law. Article 23 requires introducing age verification and parental control systems.	As above, Article 23 (1.3)
Content rating systems for users	Not mentioned.	
Parental control systems	Yes – aligned with 2018 AVMSD in the Law. Article 23 requires introducing age verification and parental control systems.	As above, Article 23 (1.3)
Procedures for complaints to the VSP	Yes – aligned with 2018 AVMSD in the Law. Article 23 requires that VSPs introduce an effective mechanism for complaints regarding content, and ensure the efficiency of this mechanism, also for response, and for appeals. Under Article 23 (5), there is also a provision for a right to reply or refute inaccurate information.	As above, Article 23 (1.4 and 1.5)
Providing media literacy measures and tools and raising users' awareness of those measures and tools.	Not mentioned. While the Law makes several references to the role of the National Council in promoting media literacy, there are no specific references to obligations for VSPs in this area. However, it may be foreseen that the National Council will cooperate with such services in promoting media literacy in the context of co-regulation.	Article 90 (59)
Implementation and supervision		
Protection of the personal data of minors.	Yes – aligned with 2018 AVMSD in the Law on Media and in the Law on Advertising	As above, Article 23 (2) And Law on Advertising (1996; 2022; 2023), Article 142 (6).
NRA tasked with assessing the appropriateness of the measures taken by VSPs?	Partly aligned with the 2018 AVMSD. There is no specific mention of assessing the appropriateness of measures taken. The Law provides that the National Council may apply sanctions to VSP providers for a range of issues: failure to submit information requested by the National Council; violations of obligations, etc.	As above, Article 114
Are there out-of-court redress mechanisms available for the settlement of disputes between users and VSPs, and can users assert their	No actual requirements regarding out-of-court redress mechanisms are mentioned. Article 23 (3) states that users who believe that providers of video-sharing platforms	As above, Article 23 (3)



rights before a court in relation to VSPs?	have violated their rights or legitimate interests provided for by this Law have the right to file a complaint with the National Council and/or the court.	
Encourage the exchange of best practice between VSPs regarding co-regulatory codes	Yes – aligned with the 2018 AVMSD in the Law. Article 92 is dedicated to the development of co-regulation, and covers issues of harmful and illegal content – and applies to all “entities in the field of media” (which under Article 13 includes VSPs).	Article 92, Article 13

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

The new Law on Media (2022) outlines a range of measures which should be taken by VSP providers including: publishing terms of use that prohibit harmful and illegal content; providing tools (age verification and parental controls) to protect minors; and providing an effective complaints mechanism. The main provisions on ACCs have also been addressed here. In addition, the Law on Advertising as amended in May 2023 introduces a new section on Advertising on Video sharing platforms and information platforms. Users have the right to assert their rights before a court in relation to VSPs, but the need for out-of-court redress mechanisms has not been mentioned.

As can be seen above, the new Law, has provided a regulatory regime for VSPs regarding the key content concerns outlined in the Directive. However, in practice, there may be obstacles to implementation – of significance is the fact that most VSPs do not have legal entity status. This hinders the identification of services, communication with them, and application of the regulations.

4.11.6. Concluding remarks and summary of findings

The legal framework relevant to audiovisual media regulation and freedom of expression in Ukraine is complex. There are many overlapping and complementary and supplementary laws. The previous key text was the “Law on Television and Radio Broadcasting (1994)”. A Draft Law on Media, introduced in 2020, aimed to update the legislation and to transpose the 2018 Audiovisual Media Services (AVMS) Directive (2018/1808). This Draft Law also had the purpose of regulating online media, which led to some initial criticism from stakeholders. Due to the full-scale invasion by Russia, stakeholders moved closer to agreement on regulation of online media and discussed the approach to this. The new Law was adopted by the Parliament on 13 December 2022, and signed by the President on 29 December 2022.

The Law introduces the required provisions regarding promoting accessible content for people with disabilities, the protection of minors, and the promotion of European works. It also establishes the regulatory regime for VSPs. This new Law on Media covers the media sector comprehensively and attempts to regulate other online media (aside from that in the



scope of the AVMS Directive).⁴⁶⁴ Parliament also passed a new Law amending the Law on Advertising on 30 May 2023, which completed the alignment with the EU acquis regarding definitions and provisions related to audiovisual commercial communications.

In addition, the country faces a deep crisis due to the Russian war of aggression against Ukraine. This impedes the possibility of moving forward with a comprehensive reform of the legislative framework. It has also led to a range of draft amendments, supplementary laws and presidential decrees in response to the war, and concerns regarding propaganda and information security. There are ongoing debates and discussions regarding freedom of expression, counteracting propaganda, and ensuring the security of information in the context of war, which have been addressed in detail above.

The list⁴⁶⁵ of countries participating in the Creative Europe Programme 2021 – 2027 was recently amended, in February 2024.

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

Table 177. Relevant documents, reports and opinions

Title	Main topics/themes	Link
Council of Europe (2022): OPINION OF THE DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW – Information Society and Action against Crime Directorate – Information Society Department – on the Draft Law “On Media” of Ukraine (No. 2693-d). Prepared by Independent Experts Eve Salomon and Tanja Kerševan Smokvina	Legal opinion on media law	
Golovchenko, Y. (2022): Fighting Propaganda with Censorship: A Study of the Ukrainian Ban on Russian Social Media. <i>The Journal of Politics</i> , Volume 84, Number 2, April 2022.	Media freedom, propaganda, censorship	In English: https://www.journals.uchicago.edu/doi/10.1086/716949
Freedom House (2021): Freedom in the World 2021: Ukraine	Press and media freedom	In English: https://freedomhouse.org/country/ukraine/freedom-world/2021

⁴⁶⁴ A very useful overview regarding other types of media covered in the law is available here: Centre for Democracy and Rule of Law (2023) Top 10 Novelties of the Media Law <https://cedem.org.ua/en/analytics/10-novelties-of-the-media-law/>

⁴⁶⁵ https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/crea/guidance/list-3rd-country-participation_crea_en.pdf



European Commission (2021): Action Document for Media Development and Countering Disinformation Facility Ukraine (EU4Media Democracy)	EC Action Document on disinformation in Ukraine	In English: https://cutt.ly/tGhiRFY
Office of the High Commissioner for Human Rights (OHCHR) (2021): Civic Space and Fundamental Freedoms in Ukraine: 1 November 2019 – 31 October 2021	Human rights, freedoms and civic space	In English: https://www.ohchr.org/sites/default/files/2021-12/UkraineCivicSpace2021-EN.pdf
Chatham House (2021): Strengthening public interest in Ukraine's media sector	Public interest, media sector overview, media ownership, online media	In English: https://www.chathamhouse.org/2021/04/strengthening-public-interest-ukraines-media-sector/02-ukraines-media-landscape
OSCE (2020): Legal Analysis of the Draft Law of Ukraine "On Media" Commissioned by the OSCE Representative on Freedom of the Media from Dr. Joan Barata Mir	Analysis of draft media legislation	In English: https://www.osce.org/files/f/documents/2/7/447508.pdf
Reporters Without Borders (2017): Media Ownership in Ukraine: informal influence through murky business schemes	Media ownership	In English: https://rsf.org/en/media-ownership-ukraine-informal-influence-through-murky-business-schemes
Reporters Without Borders (2016): Media Ownership Monitor: Ukraine	Media ownership	In English: http://ukraine.mom-rsf.org/
Council of Europe Directorate of Information Society and Action Against Crime (2016) "Institutional Mapping Analysis in the Sphere of Information Policy and Media in Ukraine". Report prepared on the basis of the expert opinion by Eve Solomon, Tanja Kerševan-Smokvina and Nataša Pirc Musar	Analysis of media sector, institutions and regulation	In English: https://rm.coe.int/16806a9509

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

4.11.8. Data compilation

This country report is based on information and materials supplied by the national expert Tetiana Avdieieva, lawyer and project manager, at the Centre for Democracy and Rule of law.

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