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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

**REPUBLIC OF MOLDOVA**

**OPINION**

**ON**

**THE LEGISLATIVE REFORMS ON MASS MEDIA REGULATION:  
THE DRAFT LAW ON MASS MEDIA, THE DRAFT LAW AMENDING  
THE AUDIOVISUAL MEDIA SERVICES CODE, AND THE DRAFT LAW  
AMENDING THE LAW ON ADVERTISING**

**Adopted by the Venice Commission  
at its 143<sup>rd</sup> Plenary Session  
(online, 13 – 14 June 2025)**

**On the basis of comments by**

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## I. Introduction

1. By letter of 27 March 2025, Mr Igor Grosu, President of the Parliament of the Republic of Moldova, requested an opinion of the Venice Commission of the Council of Europe on a legislative package on mass media regulation, which includes the draft law on mass media, the draft law amending the Audiovisual Media Services Code (hereinafter, the AMSC or the Code), and the draft law amending the Law on advertising ([CDL-REF\(2025\)024](#)).

2. Ms Veronika Bílková, Mr Christoph Grabenwarter, Mr Cesare Pinelli, and Mr Dainius Žalimas acted as rapporteurs for this opinion.

3. On 8 and 9 May 2025, a delegation of the Venice Commission composed of Ms Bílková and Mr Žalimas, accompanied by Mr Adrià Rodríguez-Pérez from the Secretariat, travelled to Chişinău and had meetings with representatives of the governing majority of the “Action and Solidarity Party” (PAS) in the Parliament and in the parliamentary committee on Culture, Education, Research, Youth, Sports and Mass Media, the Audiovisual Council, the Ministry of Culture, the public broadcaster Teleradio-Moldova (TRM), the Central Election Commission, civil society, and the EU Delegation to the Republic of Moldova. The Venice Commission is grateful to the authorities of the Republic of Moldova and to the Council of Europe Office in Chişinău for the excellent organisation of the visit.

4. During the visit, the parliamentary committee on Culture, Education, Research, Youth, Sports and Mass Media informed the delegation that the draft laws submitted to the Venice Commission were preliminary versions which were still being discussed with different stakeholders and that they had not yet been registered. The Venice Commission delegation did not meet with representatives of the parliamentary opposition as the draft laws under examination had not been published and the opposition informed the Commission that they were not aware of their content.

5. This opinion was prepared in reliance on the English translation of the draft laws. The translation may not accurately reflect the original version on all points.

6. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 8 and 9 May 2025. The draft opinion was examined at the Joint Meeting of the Sub-Commissions on Constitutional Justice and Fundamental Rights on 12 June 2025. Following an exchange of views with Ms Liliana Nicolaescu-Onofrei, Chair of the parliamentary committee on Culture, Education, Research, Youth, Sports and Mass Media of the Parliament of the Republic of Moldova, it was adopted by the Venice Commission at its 143<sup>rd</sup> Plenary Session (online, 13-14 June 2025).

## II. Background

### A. Context and political landscape

7. To better understand the context and reasoning behind the proposed amendments, it is important to outline three key developments that hold particular relevance in the Republic of Moldova. The first one concerns the measures aimed at “de-oligarchising” the country following the unprecedented political and constitutional crisis of June 2019 and which impacted the structures and functioning of democratic institutions and state administrations.<sup>1</sup> Quick decisions were made to set aside officials appointed under the previous administration and who were suspected of having served private interest in their capacity as public officials.<sup>2</sup>

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<sup>1</sup> For an overview of these developments, see Parliamentary Assembly of the Council of Europe (PACE), The functioning of democratic institutions in the Republic of Moldova, [Doc. 14963](#), 16 September 2019, paras 1 et seq.

<sup>2</sup> *Ibidem*, para. 29.

8. After the 2020 presidential and 2021 snap parliamentary elections, the authorities embarked on a far-reaching programme of reform to tackle the roots of “state capture” and restore integrity and public trust in State institutions.<sup>3</sup> Amendments to the AMSC adopted in September and November 2021 restored parliamentary control over the Audiovisual Council and the public broadcaster, Teleradio-Moldova (TRM), providing that their appointees could be dismissed if they were considered as under-performing.<sup>4</sup> On 11 November 2021, the parliament rejected the Audiovisual Council’s activity report and dismissed all its members, and new ones were appointed on 3 December 2021.<sup>5</sup> These measures triggered questions about the transparency and speed of the selection process, and the Parliamentary Assembly of the Council of Europe (PACE) urged the authorities to ensure that such changes were made in accordance with the rule of law and Council of Europe standards.<sup>6</sup>

9. The second development is the path of integration of the Republic of Moldova into the European Union (EU). The Moldovan authorities applied to the EU on 3 March 2022. On 16 June, the European Commission recommended providing the status of candidate country to the Republic of Moldova, and the Council of the European Union granted this status on 23 June.<sup>7</sup>

10. On 20 October 2024, the Republic of Moldova held a referendum on constitutional amendments on the irreversibility of Moldova’s EU path. The amendments updated the Constitution’s preamble to confirm Moldova’s European identity, its irreversible path toward the EU, and EU integration as a strategic goal, while also adding two new articles allowing parliament to adopt laws for joining EU treaties and giving EU law priority over national law.<sup>8</sup> On 25 October 2024, the CEC declared the republican constitutional referendum valid with a turnout of 50.72%, the turnout requirement being 33.33 %. Out of the total number of 1 488 874 valid votes cast, 749 719 (50.35%) people voted for the “yes” option and 739 155 (49.65%) people voted for the “no” option.<sup>9</sup> On 31 October 2024, the Constitutional Court reviewed the results protocol and confirmed the validity of the constitutional referendum. On 5 November, the decision confirming the referendum results was published in the Official Journal of the Republic of Moldova.<sup>10</sup>

11. The third development is not unique to the Republic and Moldova and relates to the overall transformation of the media landscape. For example, the Committee of Ministers of the Council of Europe has emphasised that “digital transformation has created important opportunities but also challenges for media and communication, and that the shift towards an increasingly digital, mobile and social media environment has profoundly changed the dynamics of production, dissemination and consumption of news and other media content.”<sup>11</sup>

12. Despite not being unique to the country, these transformations have had important consequences in the Republic of Moldova. The country has long been heavily exposed to external sources of information and has remained a constant target of disinformation campaigns originating from outside its borders: as early as 2018, for example, regional experts had already identified the Republic of Moldova as the most exposed and most vulnerable state in the region

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<sup>3</sup> PACE, The honouring of obligations and commitments by the Republic of Moldova, [Doc. 15680](#), 8 January 2023, para. 2.

<sup>4</sup> *Ibidem*, paras 12.3 and 19.

<sup>5</sup> *Ibidem*, paras 118 and 119.

<sup>6</sup> *Ibidem*, para. 3.

<sup>7</sup> PACE, 2023, *op. cit.*, paras 8 and 42.

<sup>8</sup> OSCE/ODIHR, 14 March 2025, [Moldova: Presidential Election and Constitutional Referendum 20 October and 3 November 2024 - Final Report](#), page. 10.

<sup>9</sup> PACE, Observation of the presidential election (20 October and 3 November 2024) and constitutional referendum (20 October 2024) in the Republic of Moldova, [Doc. 16074](#), 22 November 2024, para. 82.

<sup>10</sup> *Ibidem*, para. 85.

<sup>11</sup> Committee of Ministers, [Recommendation CM/Rec\(2022\)4](#) to member States on promoting a favourable environment for quality journalism in the digital age, preamble.

to Russian propaganda.<sup>12</sup> The impact has been exacerbated since the Russian full-scale war of aggression against Ukraine in February 2022, when the Republic of Moldova had to respond to a pressing social need to counter propaganda and disinformation.<sup>13</sup> The country resorted to measures in the wake of the war to mitigate the effects of a hybrid war. On 7 April 2022, the Moldovan Parliament banned the use of war symbols.<sup>14</sup> In June 2022, the parliament also adopted “the law on information security” which banned news bulletins and features produced in countries that did not ratify the European Convention on Transfrontier Televisions (ECTT).<sup>15</sup> The Venice Commission adopted an Opinion and an *amicus curiae* brief on these restrictions.<sup>16</sup> The Commission acknowledged that the laws generally complied with freedom of expression standards but recommended further clarifications to ensure legal precision, consistency, and alignment with national security objectives, particularly regarding the definition and sanctioning of extremist symbols and content.

13. During the campaign for the above-mentioned constitutional referendum (which was held together with the first round of the Presidential elections) in October 2024, the scale of foreign interference and disinformation, predominantly on behalf of the Russian Federation, was found to be unprecedented.<sup>17</sup>

## **B. National legal framework and overview of the amendments**

14. The fundamental legal basis is the Constitution of the Republic of Moldova, particularly its Article 32, which guarantees freedom of opinion and expression. However, it also allows for limitations in situations where such freedoms might conflict with the rights of others or public interests, such as national security or morality.

15. The Republic of Moldova is bound by several international human rights treaties which protect the right to freedom of expression and media freedom more specifically, which include the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>18</sup>

16. One of the central legislative acts governing media is the AMSC, which was adopted in 2018 (Law No. 174/2018). The AMSC regulates the operations of both public and private broadcasters, covering areas such as licensing, content standards, and language requirements. The AMSC has been amended several times since 2018. In its ruling in the case of *Manole and others v. Moldova* of 2009, the ECtHR had found a violation of Article 10 arising *inter alia* from insufficient statutory guarantees of independence for the public broadcaster. In particular, the Court argued that “[t]he legislative framework [...] was flawed, in that it did not provide sufficient safeguards against the control of TRM’s senior management, and thus its editorial policy, by the political

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<sup>12</sup> Venice Commission, [CDL-AD\(2022\)026](#), Republic of Moldova - Opinion on amendments to the Audiovisual Media Services Code and to some Normative Acts including the ban on symbols associated with and used in military aggression actions, para. 90.

<sup>13</sup> *Ibidem*, para. 91.

<sup>14</sup> PACE, 2023, *op. cit.*, para. 120.

<sup>15</sup> PACE, 2023, *op. cit.*, para. 82.

<sup>16</sup> Venice Commission, [CDL-AD\(2022\)026](#), *op. cit.*, and Venice Commission, [CDL-AD\(2022\)027](#), Republic of Moldova - *Amicus curiae* brief on the clarity of provisions on combating extremist activities.

<sup>17</sup> See PACE, 2024, *op. cit.*, paras 47, 49, 58, and 89; and OSCE/ODIHR, 2025, *op. cit.*, pages 1-2.

<sup>18</sup> The legal order of the Republic of Moldova accords a high status to international human rights treaties, as reflected in Articles 4 and 8 of its Constitution. Article 4(1) establishes that constitutional provisions on human rights and freedoms must be interpreted and enforced in accordance with the Universal Declaration of Human Rights and international conventions and treaties to which the country is a party. Furthermore, Article 4(2) affirms that in the event of a conflict between domestic laws and international human rights treaties, the international instruments prevail. Complementing this, Article 8 reiterates the Republic of Moldova’s commitment to respect international law and provides that ratified treaties take precedence over conflicting national laws, though not over the Constitution itself.

organ of the Government.”<sup>19</sup> Whereas the adoption of the AMSC in 2018 no longer provided for parliamentary control over the public broadcaster, the amendments to the Code in 2021 reverted to the previous situation. During its meeting in June 2022, the Committee of Ministers of the Council of Europe thus decided to resume the examination of the case under the enhanced procedure.<sup>20</sup>

17. In turn, the country’s advertising sector is governed by the Law on advertising, adopted in 2022 (Law No. 62/2022) and subsequently amended to address evolving market dynamics and regulatory needs. In January 2023, significant amendments came into force, introducing stricter regulations on various aspects of advertising practices. Additional relevant provisions are found *inter alia* in Law No. 64/2010 on freedom of expression, which regulates the rights and duties of journalists, as well as in the Criminal and Contravention codes, such as those regarding libel.

18. The media landscape regulation in the Republic of Moldova has undergone numerous analyses.<sup>21</sup> These include the already mentioned Opinions on the ban on symbols associated with and used in military aggression actions and other media restrictions, and to lesser extent those on electoral matters.<sup>22</sup> More recently, the country has also been subject to assessments on its media framework’s compliance with international standards as well as on media pluralism.<sup>23</sup>

19. Media issues are salient in the monitoring reports by the PACE and the European Commission. In addition to echoing the recommendations by the Venice Commission on the 2022 amendments, the 2023 monitoring report by the PACE also noted that media representatives pointed out the economic challenges they faced, and the need to have transparent information about media ownership.<sup>24</sup> In a similar vein, the 2024 European Commission’s Report on the Republic of Moldova has noted that significant challenges persist, including continued political influence over the media, a lack of transparency in media ownership, and ongoing intimidation of journalists. The European Commission has emphasised the need to strengthen the protection of journalists through effective law enforcement investigations, review the rules for selecting members of public media institutions such as the public service broadcaster and the Audiovisual Council, and extend transparency requirements to online and print media. It has also recommended revising the national mechanism allowing the suspension of television channels to ensure full compliance with EU and international standards.<sup>25</sup>

20. The current legislative reforms involve amendments to the AMSC and to the Law on advertising, as well as the adoption of a new law on mass media. The amendments to the AMSC aim to ensure a level playing field for media providers, including video-sharing platforms, along with stricter oversight of disinformation and hatred. Most important, they address the concerns about the independence of regulatory and public bodies. The amendments to the Law on advertising seek to improve transparency and fairness in advertising, particularly in terms of state advertisement and messages of public interest. The proposed law on mass media is meant to consolidate and harmonise existing media regulations, including print, online, and audiovisual

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<sup>19</sup> European Court of Human Rights (ECtHR), *Manole and Others v. Republic of Moldova*, Application No. [13936/02](#), 2009, para. 111.

<sup>20</sup> Committee of Ministers, Decision [CM/Del/Dec\(2022\)1436/H46-15](#), 8-10 June 2022.

<sup>21</sup> See, for example, Barata Mir, Joan, [Legal Analysis on the Law on Amendment of the Code of Audiovisual Media Services of the Republic of Moldova](#), OSCE, 11 January 2022.

<sup>22</sup> Venice Commission, [CDL-AD\(2022\)026](#), *op. cit.*, and Venice Commission, [CDL-AD\(2022\)027](#), *op. cit.* On electoral matters related to the media landscape, see in particular Venice Commission and ODIHR, [CDL-AD\(2020\)027](#), Republic of Moldova - Urgent joint opinion on the draft Law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services, and to a lesser extent, Venice Commission and ODIHR, [CDL-AD\(2022\)025](#), Republic of Moldova - Joint opinion on the draft electoral code.

<sup>23</sup> Deidre Kevin, [Legal Analysis: Assessment of Moldovan Audiovisual Legislation in Relation to the Audiovisual Media Services Directive, European Media Freedom Act, Digital Services Act, And Other Relevant International Standards](#), Freedom House, April 2024.

<sup>24</sup> PACE, 2023, *op. cit.*, para. 123.

<sup>25</sup> European Commission, [Moldova Report 2024](#), page 7.



media. It focuses on enhancing media pluralism, improving public access to information, and increasing the transparency of media ownership. New provisions on journalists' activity, rights, and obligations are to be found both in the amendments to the AMSC and the draft law on mass media.

21. In general, all three draft laws pursue the same purpose: to harmonise the Moldovan national legislation in the field of media with the relevant EU legislation, including the Audiovisual Media Service Directive (AVMSD)<sup>26</sup> and the European Media Freedom Act (EMFA).<sup>27</sup> The draft laws also aim at filling the existing gaps in legal regulation, following the above-mentioned analysis. Other specific aims pursued by the draft laws follow from the above-mentioned general aim to restore the independence of the Audiovisual Council and the public broadcaster, as well as to strengthen autonomy guarantees for journalist profession.

22. In February 2025, the Parliamentary Committee requested an expert review of these three laws to the Directorate of Democracy of the Council of Europe (of the Directorate General of Democracy and Human Dignity, DGII). The Opinion (LEX\_2025\_07) was prepared by the Division for Cooperation on Freedom of Expression through its Project "Advancing media freedom in the Republic of Moldova," and sent to the Parliament in April. Their review highlights progress, noting steps toward EU alignment, better statutory guarantees of independence for regulatory bodies and the public broadcaster, as well as stronger content regulation. In turn, the expert review raises concerns about vague definitions, overlapping responsibilities, and insufficient safeguards for media independence and pluralism. DGII recommends harmonising legal frameworks, clarifying regulatory criteria, and enhancing transparency, oversight, and protections for public service media and advertising practices.

### C. International standards

23. The relevant international standards concerning freedom of expression and media have been outlined in several recent Opinions of the Venice Commission. Particularly relevant are the Opinions on mass media.<sup>28</sup> In the case of the Republic of Moldova, of special significance are the Opinion on the ban of symbols associated with and used in military aggression actions and imposing restrictions on the media and the *amicus curiae* brief on the clarity of provisions on combating extremist activities.<sup>29</sup>

24. The key international standard is Article 10 of the ECHR and the case-law of the ECtHR. Very similar principles are also enshrined in Article 19 of the ICCPR, as interpreted by the United Nations (UN) Human Rights Committee.<sup>30</sup> The protection of media freedom is ensured, in addition to general human rights instruments, through several specific instruments. Those include the ECTT (ratified by the Republic of Moldova) or the 1960 European Agreement on the Protection of Television Broadcast (not ratified by the Republic of Moldova).<sup>31</sup>

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<sup>26</sup> [Directive \(EU\) 2018/1808](#) of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

<sup>27</sup> [Regulation \(EU\) 2024/1083](#) of the of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act).

<sup>28</sup> Venice Commission, [CDL-AD\(2023\)040](#), Kyrgyzstan - Opinion on the Draft Law of the Kyrgyz Republic about the media; and Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), Armenia - Joint Opinion on the draft laws amending and supplementing the "Law on Mass Media" and the Civil Code. See also Venice Commission, [CDL-AD\(2020\)013](#), Albania – Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service; Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)009](#), Azerbaijan – Joint Opinion on the Law on Media.

<sup>29</sup> Venice Commission, [CDL-AD\(2022\)026](#), *op. cit.*, and Venice Commission, [CDL-AD\(2022\)027](#), *op. cit.*

<sup>30</sup> See the UN's Human Rights Committee, [General comment No.34 on Article 19](#).

<sup>31</sup> See Venice Commission, [CDL-AD\(2022\)026](#), *op. cit.*, para. 17.

25. The ECtHR has underlined that freedom of the press and other news media afford the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues and on other subjects of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them.<sup>32</sup>

26. According to the interpretation of the ECtHR, Article 10 of the ECHR imposes both negative and positive obligations on member states to safeguard freedom of expression, particularly in the field of audiovisual media. The Court has emphasised that genuine pluralism in the broadcasting sector cannot be ensured solely by the presence of multiple channels or the formal possibility for new operators to enter the market; rather, what is required is that providers have meaningful and effective access to the audiovisual sector, so as to ensure a diversity of programming that reflects, as fully as possible, the range of opinions and perspectives within society.<sup>33</sup> The ECtHR has further underlined that states must not permit powerful economic or political actors, including the state itself, to obtain a dominant position within or over broadcasters, as such influence risks exerting undue pressure on editorial independence.<sup>34</sup> In this context, the State bears a positive obligation to ensure diversity in broadcasting by means of legislation and, in particular, not to undermine this obligation by allowing a weighty economic or political group or the state to assume a dominant position over a broadcaster or within a broadcaster.<sup>35</sup>

27. The Committee of Ministers of the Council of Europe has stressed the importance of media pluralism as well and set some guidelines on what requirements need to be fulfilled to be in compliance with Article 10 of the ECHR. Media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression. The recommendations of the Committee of Ministers point out the importance of the following two principles: firstly, ensuring media pluralism and secondly, editorial independence.<sup>36</sup>

28. Paramount to media pluralism and to upholding the right to freedom of expression is the independence of media regulatory bodies.<sup>37</sup> Appointment procedures should be transparent, based on objective criteria, and reflect societal diversity, without allowing political influence at the executive or editorial level.<sup>38</sup> To ensure the independence of broadcasting regulatory authorities, clear incompatibility rules are essential, preventing members from holding political office or media-related interests that could lead to conflicts of interest.<sup>39</sup> Dismissal should only occur under strictly defined legal grounds, such as serious misconduct or incapacity, with a right to appeal, thereby safeguarding regulatory bodies from undue political or economic pressure.<sup>40</sup>

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<sup>32</sup> See, for example, ECtHR, *Handyside v. the United Kingdom*, Application no. [5493/72](#), 1976, para. 49; and ECtHR, *Lingens v. Austria*, Application no. [9815/82](#), 1986, paras 41-42.

<sup>33</sup> See ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], Application no. [38433/09](#), 2012, para. 130.

<sup>34</sup> See ECtHR, *Manole and Others v. Republic of Moldova*, Application No. [13936/02](#), 2009, para. 98.

<sup>35</sup> See ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], Application no. [38433/09](#), 2012, para. 134; ECtHR, *Manole and Others v. Republic of Moldova*, Application No. [13936/02](#), 2009, paras 95-102; ECtHR, *NIT S.R.L. v. the Republic of Moldova*, Application no. [28470/12](#), 2022, paras. 184 et seq.

<sup>36</sup> See *inter alia* Committee of Ministers of the Council of Europe, [Recommendation No. R\(99\)1](#) to member states on measures to promote media pluralism; Committee of Ministers, [Recommendation CM/Rec\(2007\)2](#) to member states on media pluralism and diversity of media content; Committee of Ministers, [Recommendation CM/Rec\(2022\)11](#) to member states on principles for media and communication governance.

<sup>37</sup> See Committee of Ministers, [Recommendation Rec\(2000\)23](#) to member states on the independence and functions of regulatory authorities for the broadcasting sector; Committee of Ministers, [Recommendation CM/Rec\(2012\)1](#) to member States on public service media governance. See also Committee of Ministers, [Declaration on the independence and functions of regulatory authorities for the broadcasting sector](#), 2008.

<sup>38</sup> Committee of Ministers, [Recommendation Rec\(2000\)23](#), *op. cit.*, paras 4-5; and Committee of Ministers, [Recommendation CM/Rec\(2012\)1](#) *op. cit.*, para. 6.

<sup>39</sup> Committee of Ministers, [Recommendation Rec\(2000\)23](#), *op. cit.*, paras 4 and 7.

<sup>40</sup> *Ibidem*, paras 6-7.



29. Together with the objective of safeguarding media pluralism, the Committee of Ministers has also underscored the critical importance of transparency in media ownership.<sup>41</sup> States should promote a regime of transparency of media ownership that ensures the public availability and accessibility of accurate, up-to-date information regarding both direct and beneficial media ownership. This includes details such as the legal name and contact information of media outlets, identities of direct and beneficial owners, and any affiliations that may influence editorial decisions. Independent national media regulatory authorities or other designated bodies should be responsible for collecting, maintaining, and disseminating this information through publicly accessible databases, thereby enhancing public scrutiny and preventing undue concentration of media power.

30. The latest and most relevant Council of Europe documents specifically emphasise that member states are to create a generally favourable environment to and a high level of public awareness about the potential role of self-regulatory mechanisms such as press and media councils equipped with stable, meaningful powers in enhancing the media's commitment to verification and quality control in the digital age.<sup>42</sup> Moreover, states bear distinct obligations with regard to self-regulation, especially enabling appropriate funding of self- and co-regulation mechanisms and access to financial support schemes, in order to secure their independence and financial sustainability.<sup>43</sup>

31. The Venice Commission has underlined the importance of an effectively functioning and independent self-regulatory body in the media sphere involving all relevant stakeholders of the media community and capable of ensuring an effective and respected system of media accountability in the online media field through self-regulation.<sup>44</sup> In order to address the problem of malicious or irresponsible media behaviour on the Internet, for example, the Venice Commission has encouraged the setting-up of an effectively functioning and independent self-regulatory body involving all relevant stakeholders of the media community and capable of ensuring an effective and respected system of media accountability in the online media field through self-regulation.<sup>45</sup> The Venice Commission has also stated that journalists' associations provide the paradigm for self-regulation of journalists and set the framework of ethical rules that journalists must respect when they seek to reveal the truth.<sup>46</sup>

32. In the case of the legislative package, the EMFA is a point of reference, although not binding in the Republic of Moldova in the current context. However, through the above-mentioned constitutional amendments on the EU integration the Republic of Moldova assumed the commitment to take due account of the EU legislation, including the EMFA. This Regulation, which entered into force on 7 May 2024, introduces new rules to promote media pluralism and independence, to prevent political interference in editorial decisions, and to ensure transparency of media ownership. Among others, the Act also seeks to protect journalists from having to disclose their sources and sets requirements for transparent allocation of state advertising.

#### **D. Scope of the Opinion**

33. The current Opinion focuses on key elements of the draft laws, in light of international standards and best practices, with particular attention to their scope; restrictions to freedom of expression; the composition and powers of the media regulatory and self-regulatory bodies as

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<sup>41</sup> Committee of Ministers, [Recommendation CM/Rec\(2018\)1](#) to member States on media pluralism and transparency of media ownership.

<sup>42</sup> Committee of Ministers [Recommendation CM/Rec \(2022\)04](#), *op. cit.*

<sup>43</sup> Committee of Ministers, [Declaration Decl\(13/02/2019\)2](#) the on the financial sustainability of quality journalism in the digital age.

<sup>44</sup> Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op. cit.*, para. 25.

<sup>45</sup> *Ibidem*, para. 27.

<sup>46</sup> *Ibidem*, para. 26.

well as the public broadcaster; the regulation of the media; of the journalists' activity; and of state advertisement.

34. However, the Venice Commission has neither previously assessed in a comprehensive manner the existing provisions in the AMSC nor those in the Law on advertising. Therefore, the current Opinion also addresses the existing provisions on the above-mentioned elements to the extent necessary with a view to ensure a thorough examination. The absence of comments on other provisions of the laws or the drafts should not be seen as tacit approval of these provisions.

### **III. Analysis**

#### **A. Scope, definitions, and principles**

##### **1. Material scope and definitions**

35. The legislative package has a broad material scope, sometimes overlapping. The proposed law on mass media applies to media service providers (Article 1(3)), except for those issues regulated by the AMSC, unless expressly provided for by the law on mass media (Article 1(4)).<sup>47</sup> Some of the provisions of the law on mass media apply only to press publications, which are a form of media services providers, either printed and/or online (Article 6(1)). According to Article 2(2)(a) of the AMSC, the Code applies to linear and non-linear audiovisual media services providers as well as to video-sharing platform services by media service providers, media service distributors, and video-sharing platform providers. The material scope of the Law on advertising is the advertising market, namely: advertising providers, producers, distributors, as well as advertisers and consumers (Articles 1 and 2(1)).

36. Under Article 2 of the draft law on mass media, media are broadly defined as “natural or legal persons engaged in the production, distribution and dissemination of media content intended for a wide audience, exercising, assuming or holding editorial responsibility for that content, within a regulated professional field in which media services are conceived, produced, distributed and delivered.”

37. The scope of the AMSC is narrower and limited to audiovisual media services, with a proposed definition in the draft law amending the AMSC as “a service under the editorial responsibility of a media service provider, the main purpose of which, or a dissociable section thereof consists of providing the general public with audiovisual, television or radio broadcasting programs, linear or non-linear, through electronic communications networks, for informational, entertainment or educational purposes or for the purpose of carrying out audiovisual commercial communication” (Article 1). The proposed definition makes explicit reference to audiovisual media being “television or radio broadcasting programs, linear or non-linear, through electronic communications networks.”

38. The draft amendments to the AMSC broaden the Code's current scope to also include video-sharing platform and video-sharing platform providers (Articles 2(7), 7, 11(1), and 61<sup>1</sup>). Article 1 of the amended AMSC defines video-sharing platforms service and video-sharing platform provider, respectively, as “a service, the main purpose of which or a dissociable section thereof or an essential functionality thereof consists in providing to the general public audiovisual programmes, user-generated video material, or both, via electronic communications networks, for informational, entertainment or educational purposes, for which the video-sharing platform

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<sup>47</sup> Whereas the request from the Moldovan authorities refers to the “mass media” package and to the law on “mass media”, the definitions in the legislative package refer to “media” instead. In fact, the draft Law on mass media is entitled “on media” in the draft translation provided by the authorities. During the fact-finding visit to Chisinau, the delegation was informed that this could be due to translation issues. To ensure consistency with the text, references in the laws will only be to “media”, whereas “mass media” will be used in the title of the draft law and when referring to the package, to ensure consistency with the request.

provider has no editorial responsibility and the organisation of which is determined by the video-sharing platform provider, including by automated means or algorithms, in particular by display, tagging and sequencing” and “natural or legal person that offers a video sharing platform service.”

39. Certain provisions in the draft law on mass media are meant to apply only to press publications, defined twice in the draft text: in Article 1 and Article 6. The two definitions are not identical. The former (Article 1 of the draft law on mass media) describes press publications as “an organised collection of mainly literary works of a journalistic nature, emphasising texts intended to inform, analyse, comment on, or report events, facts, ideas, or opinions.” It also notes that such works must be written in accordance with journalistic ethics. The latter definition (Article 6 the draft law on mass media) is more comprehensive. It includes both printed and online materials, provides detailed conditions for what qualifies as a press publication, and highlights the requirement for editorial responsibility and supervision by a media service provider. It also outlines clear exclusions for certain types of publications (e.g., those published by political parties, for scientific purposes, or for advertising).

40. Recommendation CM/Rec(2022)11 of the Committee of Ministers provides that “media” includes providers of services that meet the following criteria, or a combination thereof, as outlined in Recommendation CM/Rec(2011)7 on a new notion of media: (a) they intend to operate as a media outlet; (b) they aim to produce and disseminate content; (c) they exercise editorial control over content and adhere to professional standards; and (d) they seek outreach and are subject to public expectations.<sup>48</sup> This definition encompasses print, broadcast, and online media, including audio and video streaming services. Other international bodies, like the UN Human Rights Committee and the United Nations Educational, Scientific and Cultural Organization (UNESCO) also take a broad, functional approach, highlighting that media plays a crucial role in informing, educating, and entertaining the public, regardless of its format or distribution method.

41. The Moldovan definition of “media” is therefore generally in line with international standards. Yet, the reference to a “regulated professional field” may limit the scope by implying that only those in formal, regulated industries are considered part of the media. This could exclude informal or independent content creators, such as citizen journalists or bloggers, who still perform media functions but may not operate within a regulated framework.

42. At the same time, media is an evolving concept that encompasses all channels used to reach a public audience, including traditional forms such as newspapers, radio, and television, as well as newer platforms like websites, blogs, and social media. Therefore, narrower definitions of audiovisual media and press publications may raise concerns by these and other types of media content, potentially creating confusion about what qualifies as media.<sup>49</sup>

43. In the case of press publications, the exclusion of publications from political parties, academic journals, and those of promotional nature could exclude relevant content for public debate, particularly in political or social contexts, while the requirement for publications to focus on “current affairs, news, or relevant topics” could overlook other important forms of media, such as cultural or lifestyle content. Additionally, the law’s focus on editorial responsibility, whereas in line with international standards, might exclude independent or citizen journalists. Overall, these exclusions and restrictions could narrow the scope of what qualifies as press publications, limiting diversity and access to essential information.

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<sup>48</sup> Committee of Ministers, [Recommendation CM/Rec\(2022\)11](#), *op. cit.*, and Committee of Ministers, [Recommendation CM/Rec\(2011\)7](#) to member States on a new notion of media.

<sup>49</sup> In past Opinions, the Venice Commission has welcomed a focus on defining the criteria and essence of the media, rather than enumerating specific types. This includes emphasising the presence of editor responsibility and control. See Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op. cit.*, paras 49-50.

44. The terminology on and the definitions of video-sharing platforms are inspired by the AVMSD. The directive defines these as “a service [...] where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks [...] and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing” (Article 1(1)(b)(ii) of the AVMSD). It defines a video-sharing platform provider as “the natural or legal person who provides a video-sharing platform service” (Article 1(1)(e) of the AVMSD). The definitions are essentially identical in meaning, albeit with slight differences in phrasing.

45. Although the definitions in the three draft laws generally align with international standards, the Venice Commission recommends revising the definition of “media” to ensure that it comprises informal or independent content creators, as well as the definition of “press publication”, to ensure it adequately reflects both current and emerging forms of media. It also advises reviewing the distinctions between audiovisual media, video-sharing platforms, and press publications to prevent legal gaps in the scope of the legislative package. Furthermore, the Commission emphasises the need to harmonise these concepts across the three draft laws and in related legislation not examined in the Opinion. In this context, the Venice Commission notes that media regulation may remain unnecessarily complex due to overlapping definitions and scopes, both within the three draft laws and in other texts such as the 2010 Law on freedom of expression, which also addresses editorial independence and protections for journalists.

46. Additional definitions, such as those on disinformation and journalist, are discussed below.

## **2. Territorial scope**

47. For what concerns jurisdiction, Article 2(5) of the AMSC defines a media service provider as falling under Moldovan jurisdiction if it meets at least two of three criteria relating to the location of its headquarters, where editorial decisions are made, and where the majority of its workforce operates. The amended law modifies two of these scenarios. Article 2(5)(b) applies to media whose editorial decisions are taken in another state, as long as the main headquarters are located in the Republic of Moldova and a significant part, not necessarily a majority, of the workforce operates in Moldova. Article 2(5)(c) of the draft AMSC includes scenarios where the main office is located in another country, provided editorial decisions are made in Moldova and the majority of the workforce operates there. It also clarifies that if the main office is in a member state of the EU or a party to the ECTT, the number of staff in that country is not significant as long as editorial decisions are made in Moldova, and that in those cases the provider is considered under Moldovan jurisdiction. These changes reflect a nuanced expansion of jurisdiction criteria. The revision in Article 2(5)(b) weakens the workforce requirement from “majority” to “significant part” and introduces a key condition about editorial decisions being made abroad. In Article 2(5)(c), adding the possibility of a foreign-based main office strengthens Moldova’s jurisdictional claim when editorial control and workforce presence remain within its territory.

48. The addition of letter (d) in Article 2(7) of the AMSC states that if it is unclear whether the majority of the broadcasting workforce operates in Moldova or an EU Member State, the provider will be considered established in Moldova if it began transmissions there and maintains a stable economic link. This addition appears well justified, as it addresses jurisdictional uncertainty in such ambiguous cases.

49. For those cases under Article (2)7 of the AMSC in which “the media service provider shall be considered outside the jurisdiction of the Republic of Moldova”, the provision is significantly supplemented with the obligation to inform the Audiovisual Council of any changes that may affect the determination of jurisdiction, within 15 days from the moment of the change. In these

cases, “[t]he Audiovisual Council shall draw up and maintain an updated list of audiovisual media service providers that are under the jurisdiction of the Republic of Moldova and indicate on which criteria set out in paras (5) and (6) of this article their jurisdiction is based.” This addition strengthens the guarantees for both the Audiovisual Council and, indirectly, for the providers, by ensuring they are informed of decisions regarding jurisdiction, as outlined in those paragraphs.

50. Further additions to Article 2(7) of the AMSC are introduced with the aim of regulating the case of video-sharing platforms providers that are not established in the Moldovan territory nor on that of EU Member States. In such cases, the jurisdiction of the Republic of Moldova is affirmed if the video-sharing platform provider: (a) has a parent company that is established on the territory of the Republic of Moldova; (b) has a branch established on the territory of the Republic of Moldova; or (c) is part of a group and another enterprise in that group is established on the territory of the Republic of Moldova. While regulating media service distributors, paras (8) to (11) introduce changes according to the same criteria adopted in the new version of paras (5) to (7) for video-sharing platforms. These additions aim at solving uncertainties which may arise from the technical possibility for platform providers of avoiding submission to the rules of whichever territorial unit, be it a state or an international organisation. Such aim appears justified, and so are the means that the new version of the Code provides to pursue that aim.

## **B. Restrictions to freedom of expression**

### **1. Principles**

51. The operation of media in the Republic of Moldova is governed by a legal framework designed to balance freedom of expression with the need to maintain public order, protect national security, and ensure ethical journalistic practices. Article 7 of the AMSC and Article 3 of the proposed law on mass media affirm that the State guarantees freedom of expression for the media, audiovisual services, and video-sharing platforms, while explicitly prohibiting censorship and prior control of content. Media providers are required to uphold editorial independence, respect journalistic ethics, and ensure the free flow of information in line with the AMSC and Law No. 64/2010 on freedom of expression.

52. Article 8 of the AMSC guarantees the editorial independence and creative freedom of media service providers, prohibits censorship and any interference with the content or presentation of audiovisual programmes, and affirms that regulations adopted by the Audiovisual Council do not constitute such interference. In addition, para. 8(3) now includes a provision stating that the State respects the effective editorial freedom and independence of audiovisual media service providers and shall not interfere with or seek to influence their editorial policies and decisions, including through the national regulatory authority. Article 17 of the AMSC establishes that radio frequencies are public property used under licence, with particular emphasis on ensuring that the national audiovisual space promotes the free flow of information, supports freedom of expression, meets social information needs, and upholds the professional and social integrity of media service providers.

53. According to the draft Articles 17<sup>1</sup>(1) and (2) of the AMSC, the State guarantees the freedom of reception of audiovisual programmes that have been produced in EU member states and states that have ratified the ECTT, whereas programmes produced in other states may be broadcasted without prejudice to the provisions of this Code.

54. The Code also lists different prohibitions on content, that include both origin-based as well as content-based restrictions. Article 11 of the AMSC lists the contents that are illegal and harmful, whereas Article 17 is amended with detailed provisions on prohibited contents in the audiovisual space. These include those contents that promote incitement to violence or hatred (Article 17 (3)(a)), that harm or present a risk of serious and grave damage to public health or to public

security (Articles 17(3)(b) and (d), respectively), qualifies as disinformation (Article 17(3)(c)), or are defined as terrorist offences or their incitement (Articles 17(3)(f), (3<sup>1</sup>) and (3<sup>2</sup>)).

55. In its previous Opinion on media legislation and related issues in the Republic of Moldova,<sup>50</sup> the Venice Commission recalled that according to Article 10 ECHR “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers [...]”. This right may be restricted if the restrictions are “prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

56. In its 2022 Opinion the Venice Commission analysed in detail the restrictions imposed on the media, in particular Articles 5 and 17 of the AMSC.<sup>51</sup> Those provisions focussed on preventing the broadcasting of programmes with a certain content (disinformation, extremist ideas, etc.) and on limiting the broadcasting of programmes of a certain origin.<sup>52</sup> Against the background of the ECtHR's case-law, the Venice Commission found an interference with the right to freedom of expression. Analysing its legitimacy, it stated that the Law in question responded to a pressing social need because the provisions were designed to counter Russian disinformation. However, the Venice Commission recommended clarifying and refining key provisions of the amended AMSC. It also recommended specifying the quality standards that determine the origin of audiovisual programmes revising or deleting the origin-based restriction in Article 17(4)(a) to ensure it targets only content from states posing a security threat.

## 2. Origin-based restrictions

57. From the outset, the Venice Commission regrets that its recommendations regarding the 2022 amendments of Article 5 of the AMSC remain unaddressed. The Commission recommended amending Article 5(2) of the AMSC, according to which in the case of television services, at least 50% of the audiovisual programmes acquired from abroad must come from the Member States of the EU, as well as from states that have ratified the ECTT. Even if such a provision might enhance internal media pluralism and ensure that a significant part of the programmes comply with the Moldovan legal standards, it nevertheless severely interferes with the freedom of journalism, and it is unclear why it focusses on EU member states and states that have ratified the ECTT.<sup>53</sup> Even if those states share common values with regard to television reporting, it cannot be held that all other states do not pursue these values and that reporting from these states must therefore be restricted.<sup>54</sup> The Venice Commission therefore recalls its previous recommendation proposing the amendment of Article 5(2) of the AMSC and further clarifying which quality standards apply in order to determine from which countries audiovisual programmes can be purchased.

58. By contrast, the Venice Commission welcomes that the draft amendments under examination now propose repealing the provisions of Article 17(4) of the AMSC, which forbid to broadcast audiovisual programmes of any informative, informative-analytical, military and political content produced in certain countries, notably those outside the EU and states that have not ratified the

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<sup>50</sup> Venice Commission, [CDL-AD\(2022\)026](#), *op. cit.*, para. 14.

<sup>51</sup> *Ibidem*, para. 78-103

<sup>52</sup> *Ibidem*, paras 89 and 91-92.

<sup>53</sup> *Ibidem*, para. 94. By being a party to the ECTT, of Moldova is obliged to set certain standards for the media landscape such as safeguarding pluralism and not restricting the retransmission of programme services which comply with the terms of the ECTT. In this respect, the 50% threshold could therefore also ensure that at least 50% of the purchased audiovisual programmes comply with the Moldovan legal standards.

<sup>54</sup> *Ibidem*, para. 95 *et seq.*



ECTT, except for programmes without informative, analytical, military and political information content.

### 3. Content-based restrictions

59. Provisions on illegal, prohibited, and harmful content are sparse throughout the AMSC. In its previous Opinion, the Venice Commission also examined the provisions in Article 17 of the AMSC. Articles 17(3) and (4)(b) restrict the kind of content allowed to be displayed, regardless of the origin.<sup>55</sup> All the terms used (e.g., “hatred”, “disinformation”, “propaganda of military aggression”, “extremist content”) have in common that programmes including this content run counter to the fundamental values of the ECHR. In the light of the case-law of the ECtHR, the Venice Commission deemed the content-based approach in Article 17(3) and (4)(b) of the AMSC proportionate, especially since there was a pressing social need to combat propaganda, disinformation, and other threats countering the fundamental values of the ECHR. Therefore, the interference of these provisions with the editorial independence was found justified.<sup>56</sup>

60. Despite the above, the Venice Commission criticised the use of vague and general terms such as “propaganda of military aggression”, “extremist content”, “content of a terrorist nature”. It advised replacing the term “information security” with “national security”, an internationally recognised concept.<sup>57</sup> In the current amendments to the AMSC, the majority of these vague terms have been deleted. “National security” is now contained in Articles 11(2)(a) and 17(3)(d) of the AMSC, whereas incitement to violence or hatred are defined in more detail in Articles 11(2)(b) and 17(3)(a). The concept of “terrorist offences” is regulated in detail in Article 17(3)(f) and in two new paragraphs (3<sup>1</sup>) and (3<sup>2</sup>). The letter (b) of the criticised Article 17(4) has been repealed.

61. The amended Article 11 now provides an extended list of illegal and harmful audiovisual content, defined as those that “jeopardise national security, incite violent overthrow of the constitutional order of the State, incite military aggression or armed conflict, or content the dissemination of which constitutes an illegal activity, including public provocation to commit a terrorist crime, crimes related to child pornography and crimes of a racist and xenophobic nature” (Article 11(2)(a)) and “incites hatred or violence or disseminates messages that can be qualified as discrimination, intolerance, hatred or violence based on race, colour, national or ethnic origin, sex, gender, sexual orientation, gender identity, membership of a marginalized group, language, nationality, social order, education, religion or religious beliefs, political or other beliefs, disability, age, marital or family status, property, health, personal characteristics, social status or any other criteria” (Article 11(2)(b)). The provision also specifies that “harmful content is content which may impair the physical, mental or moral development of minors” and that “harmful content shall be made available only in such a way as to ensure that minors will not normally hear or see it” (Article 11(2<sup>1</sup>)). Whereas the current wording of the amended provisions does not make it clear, it is understood that the contents in Article 11(2) letters (a) and (b) are illegal and therefore prohibited.

62. As concerns disinformation, pursuant to Article 17(3)(c) of the AMSC it is prohibited to broadcast audiovisual programmes which qualify as such in the national audiovisual space of the Republic of Moldova. Broadcasting this content may result in fines between 50 000 lei to 100 000 lei (double in case of repeated infringements) (Articles 84<sup>1</sup>(9) of the AMSC), up to the withdrawal of broadcasting license (Articles 84<sup>1</sup>(10), (11) and 54(7)). In the case of foreign audiovisual media service broadcasters, the measures described in Article 17<sup>1</sup> below apply (see paras 71-74).

63. In a similar vein, Article 13 of the AMSC imposes an obligation to media service providers to ensure a clear distinction between facts and opinions; to ensure that the information is verified and presented impartially and in good faith; to respect the principles of fairness, balance, and

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<sup>55</sup> *Ibidem*, para. 97.

<sup>56</sup> *Ibidem*, paras 97-100.

<sup>57</sup> *Ibidem*, paras 80-86 and 111.

impartiality; and to avoid any form of discrimination. Violations of this provision can also be sanctioned with a fine from 1 000 lei to 100 000 lei (Articles 84<sup>1</sup>(3)) up to the suspension of the right to broadcast audiovisual commercial communications for a period of up to 7 days for media service providers committing the infringements three or more times within one year, which are likely to harm the public interest (Articles 84<sup>1</sup>(7)), and the suspension of the broadcasting license, for a period of up to 7 days, for the media service provider who has violated the decision of the Audiovisual Council on the suspension of the right to broadcast audiovisual commercial communications (Articles 84<sup>1</sup>(8)).

64. Despite these sanctions, Article 13 has been substantially shortened and the additional remaining provision mainly delegates on the Audiovisual Council the establishment of detailed provisions in the Regulation on audiovisual content to ensure quality information to the public based on high journalistic standards, including during electoral periods (Article 13(15)). It is important to stress that, under the amendments, the provision now includes a reference to “high journalistic standards”, and that the regulation is now meant to also cover the electoral period.

65. The Venice Commission acknowledges that information disorder (misinformation, disinformation and malinformation) is indeed one of the important issues of these days and that there is globally a need to tackle the serious problems of disinformation campaigns.<sup>58</sup> However, as any restriction to the right to freedom of expression, these must be provided by law, have a legitimate aim, and be necessary and proportionate. The Venice Commission has already found that interference with editorial independence in the Republic of Moldova could be justified.<sup>59</sup> However, and in view of the fact that these provisions also apply to electoral processes (see the explicit reference in Article 13(15)), the Venice Commission recalls its previous recommendations “that a definition of false information is provided, along with instruments of how false information should be dealt with, and the capacity of the CEC (or another body) is built to deal with related complaints.”<sup>60</sup>

66. Article 1 of the draft amendments to the AMSC and Article 1 of the draft law on mass media define disinformation as “verifiably false or misleading information that is created, presented and disseminated for economic gain or to deliberately mislead the public and which may cause public harm. Public harm includes threats to democratic political and policy-making processes as well as threats to public goods such as the protection of citizens' health, the environment or security. Disinformation does not include error reporting, satire and parody, or partisan news and comment clearly identified as such”.

67. The Committee of Ministers of the Council of Europe has defined disinformation as “verifiably false, inaccurate or misleading information deliberately created and disseminated to cause harm or pursue economic or political gain by deceiving the public.”<sup>61</sup> The definition proposed in the legislative package is therefore in line with international standards, and centres on three main criteria: that the information must be verifiably false or misleading; that it must be created, presented, or spread intentionally, often for profit or to mislead; and it must have the potential to cause public harm, such as undermining democratic processes or public health. Furthermore, the definition in the proposed drafts also distinguishes disinformation from other types of content such as satire, error, or clearly partisan commentary.

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<sup>58</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)034](#), Türkiye - Urgent Joint Opinion on the Draft Amendments to the Penal Code Regarding the Provision on “False Information or Misleading Information”, para. 88. See also Venice Commission and ODIHR, [CDL-AD\(2021\)025](#), Armenia - Joint Opinion on Amendments to the Electoral Code and Related Legislation, para. 74.

<sup>59</sup> Venice Commission, [CDL-AD\(2022\)026](#), *op. cit.*, paras 97-100.

<sup>60</sup> Venice Commission and ODIHR, [CDL-AD\(2022\)025](#), *op. cit.*, para. 98. See also Venice Commission and ODIHR, [CDL-AD\(2021\)025](#), *op. cit.*, para. 74.

<sup>61</sup> Committee of Ministers, [Recommendation CM/Rec\(2022\)12](#) to member States on electoral communication and media coverage of election campaigns.

68. As concerns the instruments and capacities of public bodies, Article 75(4)(a<sup>1</sup>) of the AMSC entrusts the Audiovisual Council with supervising the national audiovisual space and detecting disinformation and other illegal content. Pursuant to Article 83(4<sup>1</sup>) of the AMSC, the Audiovisual Council remains entrusted with the examination of complaints/petitions or ex officio control regarding disinformation actions during electoral periods, which has now been broadened to all actions prohibited by law. During the meetings held in Chişinău, the delegation was informed that in 2023 the Audiovisual Council had adopted a methodology for detecting and assessing cases of disinformation in audiovisual content. Likewise, the Audiovisual Council is also responsible for developing, adopting, and implementing the procedure for certifying “trusted notifiers” (Article 75(4)(d<sup>1</sup>)).

69. While the Venice Commission acknowledges that the criteria are in line with European standards, doubts remain as far as the delegation of such powers to a regulatory body like the Audiovisual Council is concerned, especially considering the sanctions it is authorised to impose. Particularly as concerns disinformation and so-called “quality information”, the Venice Commission recalls its previous recommendations encouraging the setting-up of an effectively functioning and independent self-regulatory body involving all relevant stakeholders of the media community and capable of ensuring an effective and respected system of media accountability through self-regulation.<sup>62</sup> Whereas some degree of delegation would in principle be acceptable in view of the rapid advances in the media, particularly in the online space, it should be ensured that any regulatory powers entrusted to the Audiovisual Council aim to limit the authorities’ discretion in interpreting legal provisions related to media content that may curtail the right to freedom of expression, as well as in applying its sanctioning powers.<sup>63</sup> These regulations should be clear, ensuring a predictable and coherent interpretation of the general principles set out in the law, while also enabling media operators to fully exercise their freedom of expression without fear of a chilling effect caused by vague legal concepts.<sup>64</sup> Regulations should be regularly updated to reflect recent developments in case law, particularly by Moldovan courts and the ECtHR.

70. As concerns the sanctions for breaches of Articles 11(2) and 17(3) of the AMSC for illegal and prohibited contents, different from disinformation, the Venice Commission welcomes that the AMSC provides for the gradual adoption of sanctions, and that any suspension of a broadcasting license or retransmission authorisation is applied only as a last resort (Article 84<sup>1</sup>(12) of the AMSC) and only in cases likely to harm the public interest (Article 84<sup>1</sup>(10)). A new Article 84<sup>1</sup>(16) also provides that decisions of the Audiovisual Council can be contested in court in accordance with the provisions of the Administrative Code. In those cases, the court shall examine the disputes within 30 days from the date of acceptance of the action. However, there is no indication as regards any suspensive effect of the appeal procedure, even in the case of suspension of a broadcasting license or retransmission authorisation. The Venice Commission has warned that immediate enforcement of a heavy fine or termination/suspension of broadcasting, even if it lasts several days only, may destroy a media outlet.<sup>65</sup> In line with its previous Opinions, the Venice Commission recommends that providers affected by such grave measures should be given sufficient time to bring court proceedings, and the measure must remain suspended until the court itself decides on the issue of further suspension. Moreover, in all cases the courts should

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<sup>62</sup> Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op. cit.*, para. 27.

<sup>63</sup> See Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op. cit.*, para. 99, for a similar case.

<sup>64</sup> Broad and imprecise concepts may violate freedom of expression. See, for a similar case, Venice Commission, [CDL-AD\(2023\)040](#), *op. cit.*, para. 67. In particular, Article 34 of the Kyrgyz law was criticised for listing vague and potentially abusive grounds for prohibiting journalistic activities, such as “spreading rumours” or discrediting someone based on their “position or political opinion”.

<sup>65</sup> Venice Commission, [CDL-AD\(2015\)015](#), Hungary - Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media), para. 44. See also Venice Commission, [CDL-AD\(2020\)013](#), *op. cit.*, para. 56.

at any moment have the power to suspend the enforcement of all the sanctions, whatever is their degree and character.

#### **4. Penalties and restrictions for foreign audiovisual media service providers**

71. In addition to the penalties under Article 84<sup>1</sup> of the AMSC mentioned above (para. 62), the newly proposed Article 17<sup>1</sup>(3) of the AMSC further provides that, if audiovisual media service providers from other states violate Moldovan legislation through their programmes, the Audiovisual Council shall apply the measures set out in the ECTT, other ratified international treaties, and this Code. In the event of a violation related to the broadcasting of prohibited contents under Article 17(3) by a media service provider from an EU Member State, the Audiovisual Council notifies the provider and the competent regulatory authority of the violation, as well as about the proportionate measures it intends to adopt to restrict retransmission in the event of a repeated violation, which is possible for up to six months (Article 17<sup>1</sup>(4)). In urgent cases related to ensuring national security, it shall restrict retransmission for up to six months (Article 17<sup>1</sup>(5)).

72. In the event of a violation by a media service provider from a state outside of the EU and that has not ratified the ECTT, the Audiovisual Council shall decide on the suspension of the respective service (Article 17<sup>1</sup>(6) of the AMSC). It shall indicate the (proportionate) measures and the date of their application to suspend the reception of these audiovisual media services, television programmes, etc. The measures and the deadlines for their application must be proportionate, and the type of measure shall be selected taking into account the entity, as well as the manner of dissemination of public information.

73. Overall, the amendments regarding jurisdiction over foreign entities engaged in media activities within the Moldovan territory appear compliant with the recommendations in recent Opinions by the Venice Commission on mass media, which have established that: “[g]iven that media activities, including those conducted by foreign entities, play a crucial role in shaping public opinion, the absence of any reference in the draft law to [...] foreign actors suggests that their rights and responsibilities will remain unchanged, despite their significant influence in the media sector and the corresponding need for transparency. The Venice Commission holds that such transparency cannot be achieved solely through bilateral agreements adopted by governments. Therefore, it is essential that the draft law includes explicit references to the status of foreign media actors.”<sup>66</sup>

74. The penalties in Article 84<sup>1</sup> and the restrictions in Article 17<sup>1</sup> of the amendments to the AMSC are in line with international standards. In case of violations, those committed by EU-based providers are usually addressed through a notification, with the possibility of restricting retransmission in case of repeated violations. Providers from countries outside the EU and not party to the ECTT may face immediate suspension of services in the event of a violation. Establishing this distinction appears justified in view of the provisions in the ECTT, as long as the breach of the Moldovan legal framework can be ascertained.<sup>67</sup> In this context, it should be observed that the ECTT imposes upon its parties a binding obligation to “ensure that all programme services transmitted by broadcasters within their jurisdiction comply with the terms

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<sup>66</sup> Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op cit.*, para 84.

<sup>67</sup> For example, different sanction regimes also apply in Austria, depending on whether a programme originates from within the European Economic Area (EEA) or from outside it. According to Section 10(5) of the Austrian Audiovisual Media Services Act, EEA-based providers must be treated equally to Austrian individuals or entities. Sections 56 to 58 of the same Act govern sanctions for audiovisual media services from the EEA, allowing penalties for manifest, serious, or grave violations. In contrast, services from non-EEA countries are subject to different rules, as set out in Sections 22 and 23 of the E-Commerce Act. When it comes to suspending the distribution of a foreign programme, Section 57 allows suspension for serious breaches of the ECTT or, after notifying the relevant state, for ongoing violations. However, this provision does not apply to programmes distributed by EEA-based providers, as clarified in Section 58.

of this Convention” (Article 5 of the ECTT). Moreover, the Convention provides for mechanisms of inter-State cooperation in instances of alleged violations or abuses of rights, as set forth in Articles 24 and 24bis, respectively. It is therefore reasonable to anticipate that domestic legislation would establish differentiated measures tailored to the nature of each scenario, particularly where international instruments such as the ECTT facilitate a coordinated response among the parties.

75. Notwithstanding the foregoing, the provisions in Article 17<sup>1</sup>(6) of the AMSC are too vague and make it difficult to foresee when exactly the sanction may be applied, and for how long. As such, it does not provide sufficient guarantees against the risk of misuse or extensive interpretation of the provision. The Venice Commission thus recommends revising the provisions, to bring them in line with the sanctions’ regime assessed above (see para. 70), and that the severity of the sanction reflects the seriousness of the violation of the law. It should be made clear that adequate procedural safeguards are also in place when the Audiovisual Council suspends the reception of audiovisual media services under Article 17<sup>1</sup>(6).

### **C. Media regulatory and self-regulatory bodies, and the public broadcaster**

#### **1. The Audiovisual Council**

76. As the regulatory authority in the audiovisual sector, the Audiovisual Council is subject to changes in its composition and functioning (Articles 76 to 78 of the AMSC), which are aimed at enhancing its independence from political authorities, particularly from Parliament. The most important amendment repeals the provisions allowing the parliament to dismiss the members of the Audiovisual Council (Articles 77(4)(j) and (k), 77(4<sub>1</sub>), and (4<sub>2</sub>) of the AMSC).

77. With the amendment of Article 76(3) of the AMSC, the Audiovisual Council is to be composed of two members proposed by Parliament, representing the parliamentary majority and the parliamentary opposition; one member proposed by the President; one member proposed by the Government; and three members proposed by civil society organisations.<sup>68</sup> Whereas Articles 76(1) and (2) already provide a list of requirements and incompatibilities for candidatureship to the Audiovisual Council, the provisions are amended to introduce a cooling-off period of two years for party membership and political affiliation (Article 76(2)(e)) and extended incompatibilities when related persons own interests in media services providers and distributors, including video-sharing platform providers (Article 76(2)(f)). Incompatibilities are listed under Article 78, which remains the same. However, a clause for the automatic vacancy of an incompatible office is introduced if the situation of incompatibility is not removed in a period of 30 days (Article 78(6<sup>1</sup>)). Whereas the term of office for the members of the Audiovisual Council remains six years, the possibility of one renewal is introduced (Article 77(2)(e)).

78. Overall, the Venice Commission welcomes the aim of ensuring the independence of the Audiovisual Council. In its previous Opinions, the Venice Commission has acknowledged that, whereas there is no single European model of organisation of media regulatory authorities, “the overarching principle is that an institution overseeing the media should be independent and impartial: this should be reflected specially in the way how their members are appointed.”<sup>69</sup>

79. As concerns the participation of civil society, the Venice Commission has argued that “civil society groups could also participate in this process. It is important that the representatives of the civil society and media sector who are delegated to the Media Council are selected in a transparent and fair procedure and that the bodies delegating them do not have strong financial

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<sup>68</sup> Previously, three members were proposed by the Parliament and two by civil society organisations.

<sup>69</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)009](#), *op cit.*, para. 34. See also Venice Commission, [CDL-AD\(2015\)015](#), *op. cit.*, para. 66.



institutional or other ties with the Government or the Media Council itself.”<sup>70</sup> Pursuant to the proposed amendments, three members of the Audiovisual Council are proposed by civil society organisations.

80. Nevertheless, Parliament still announces and oversees the competition within the selection process (Articles 75(4) to (6) of the AMSC). In the proposed amendments to the AMSC, candidates for membership of the Audiovisual Council proposed by civil society organisations are selected through a public competition announced by the relevant parliamentary committee (Article 75(4)(b)). It is the parliamentary committee who sets the competition rules and deadlines (Article 75(4)(b)), conducts the competition, and selects one candidate per vacant position (Article 75(4<sup>1</sup>)). The provisions in the AMSC lack details regarding the rules for the competition, the criteria to approve or reject candidates, or even the votes needed for the selection of the candidates (pursuant to Article 75(6), if a candidate for the position of member of the Audiovisual Council does not obtain the required number of votes, the selection procedure for the remaining vacancy shall be repeated within 10 working days).

81. Despite the absence of international standards on the appointment procedures of civil society representatives in independent media regulatory agencies, the Venice Commission has in general favoured that decisions on the appointment of independent institutions by parliament are made by qualified majority and through an inclusive process that gives room for a public debate.<sup>71</sup> In the particular case of media regulators, it has found that “the purpose of imposing an obligation for a qualified majority is to ensure cross-party support for significant measures or personalities.”<sup>72</sup> This is particularly so as the appointment procedures here concern not the members appointed by the parliament, but those proposed by civil society organisations.<sup>73</sup> To avoid that the candidates proposed by civil society organisations end up representing the interests of the governing majority in the parliament, the Venice Commission therefore recommends that the selection procedures are further detailed in the law, thus limiting the discretionary authority of the parliament in their appointment. In case of voting, qualified majorities should be required, combined with an anti-deadlock mechanism that does not discourage broader political negotiations.

82. With respect to the renewal of mandates, it is important to note that there are no binding international standards expressly prohibiting or requiring such renewals. Nevertheless, the Venice Commission has previously expressed a preference for non-renewable mandates, particularly in relation to regulatory bodies such as audiovisual councils. This preference is grounded in the principle of institutional independence, as non-renewable terms are considered to reduce the risk of undue influence and enable members to perform their duties without concern for potential reappointment. In this regard, the Commission has stated that “(p)referably the mandates of members of the Council would be non-renewable, so that members of the Council

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<sup>70</sup> Venice Commission, [CDL-AD\(2015\)015](#), *op cit.*, para. 70.

<sup>71</sup> See the documents referred to in Venice Commission, [CDL-PI\(2023\)018](#), Compilation of Venice Commission Opinions and Reports relating to Qualified Majorities and Anti-Deadlock Mechanisms in relation to the election by Parliament of Constitutional Court Judges, Prosecutors General, Members Of Supreme Prosecutorial and Judicial Councils and the Ombudsman. In particular, see Venice Commission, [CDL-AD\(2018\)015](#), Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, paras 13-15; see Venice Commission, [CDL-AD\(2022\)054](#), Ukraine – Opinion on the draft law “On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis”, para. 67.

<sup>72</sup> Venice Commission, [CDL-AD\(2015\)015](#), *op cit.*, para. 64.

<sup>73</sup> On the appointment of representatives from civil society to independent institutions by parliament, the Venice Commission has recommended that “the nomination of members of civil society [...] should be done in a transparent manner, with the selection process following clear rules and criteria, which should be set out in the Draft Law.” See Venice Commission, Consultative Council of European Prosecutors (CCPE), and ODIHR, [CDL-AD\(2015\)039](#), Georgia - Joint Opinion on the draft Amendments to the Law on the Prosecutor's Office of Georgia, para. 46.



can give their opinion free of any considerations on being reappointed.”<sup>74</sup> Comparable recommendations have been issued in relation to other independent institutions, including ombudspersons, members of judicial councils, and presidents of courts.<sup>75</sup> Therefore, while the possibility of renewal is not inherently incompatible with international legal standards, it may raise concerns regarding the independence of the officeholder, particularly where the renewal process is controlled by the same body responsible for the original appointment. The Venice Commission thus underscores the importance of safeguarding institutional autonomy, even in systems where renewable mandates are permitted. At any rate, the mandate should be renewable only once.

83. As concerns the powers of the Audiovisual Council, the amendments to the AMSC expand the Audiovisual Council’s regulatory scope to video-sharing platforms, notably concerning the development and oversight of regulations on how to identify audiovisual content constituting hate speech and how to assess its seriousness (Article 75(3)(f<sup>1</sup>) of the AMSC) and on the procedure for certifying “trusted notifiers” (Article 75(4)(d<sup>1</sup>)). The Audiovisual Council is also entrusted with assessing the relevance/appropriateness of the measures taken by video-sharing platform providers (Article 75(4)(d<sup>2</sup>)). Pursuant to Article 75(4)(a<sup>1</sup>) of the AMSC, the Audiovisual Council is mandated to supervising the national audiovisual space and detecting disinformation and other illegal content. Pursuant to the new letter (i) of Article 75(4) of the AMSC, the Audiovisual Council “initiates and organizes information literacy and media education activities, audiovisual research, market studies, polls, audience research and other studies”. Likewise, with the amendment of Article 83(4<sup>1</sup>) of the AMSC, the Audiovisual Council is entrusted with the examination of all complaints/petitions or ex officio control regarding actions prohibited by law (whereas previously the provision only referred to disinformation). The draft also strengthens the Audiovisual Council’s oversight of public service media through detailed regulations on the appointment of members to the Supervisory Board of the public broadcaster and the examination of their annual activity reports (Article 75(3)(e)). The composition and functions of the Supervisory board and the management of the public broadcaster are detailed below.

84. The revised provisions in Article 81 of the AMSC introduce a more structured and transparent financing framework for the Audiovisual Council. While the Audiovisual Council continues to receive subsidies from the state budget, these are now explicitly indexed to the consumer price index of the previous year. The Council may also generate its own revenues from grants, sponsorships, and other lawful sources, provided they do not originate from individuals or entities with a direct interest in the audiovisual sector, political affiliations, or any capacity to compromise the Council’s impartiality. This includes beneficial owners of media service providers, video-sharing platforms, or politically connected actors. Although the amendments aim at greater financial stability, the Audiovisual Council’s dependence on state funding could be used to exert pressure. During the meetings in Chişinău, the delegation of the Venice Commission was also

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<sup>74</sup> Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI), [CDL-AD\(2022\)009](#), *op. cit.*, para. 37.

<sup>75</sup> With regard to ombudspersons, the Venice Commission argued that the “possibility of renewing the mandate carries the risk that the action of the person occupying the post of Ombudsman is influenced by an interest in being reappointed. (...) the principle of a single term provides a safeguard contributing to the Ombudsman’s independence. It is recommended to consider providing for a longer term of office (7-8 years) combined with a non-renewable mandate.” See Venice Commission, [CDL-AD\(2015\)034](#), Bosnia and Herzegovina - Opinion on the Draft Law on Ombudsman for Human Rights, para. 65; See also Venice Commission, [CDL-AD\(2019\)005](#), Venice Principles, no. 10. Concerning chairpersons of courts, the Commission stressed that “appointments should be for a fixed term and there should be a limit on possible renewals [...] renewable terms of office may also substantially jeopardise the independence of a Chairperson, who may at some point be influenced in his/her work by the desire to be reappointed by the executive.” See Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI), [CDL-AD\(2014\)031](#), Georgia - Joint Opinion of the Venice Commission on the draft Law on Amendments to the Organic Law on General Courts, paras. 86 and 88; see also Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion of the Draft Amendments to the Constitution, para. 87. Regarding the High Council of Justice of Georgia, the Venice Commission held that fixed non-renewable terms are to be preferred to ensure the appearance of independence; allowing re-appointment required a specific justification. See Venice Commission, [CDL-AD\(2023\)033](#), Georgia - Follow-up Opinion to Previous Opinions Concerning the Organic Law on Common Courts of Georgia, para. 23.

informed that the Council faces staffing challenges, as current employment conditions may not be sufficiently attractive to encourage applications from qualified candidates, despite the announcement of several vacancies. It was also noted that the allowances provided to Council members appear to fall short of levels considered conducive to attracting and retaining expertise. Given the broader responsibilities foreseen in the proposed amendments, the Audiovisual Council's limited financial and human resources may make it more vulnerable to political influence.

## 2. The Press Council

85. The Press Council has several tasks entrusted under the legislative package. Under the amendments to the AMSC, it is responsible for electing five out of the nine members of the Supervisory and Development Board (Article 43(3)(b) et seq.). Under the draft law on mass media, it issues special opinions enabling the registration of persons in the Register of freelance journalists (Article 12(4) et seq.).

86. Provisions on the Press Council are found in Article 18 of the draft law on mass media. According to Article 18(1), "[t]he Press Council is the national self-regulatory authority for the activity of media service providers and journalists, which examines complaints and self-reports, issues decisions finding violations and recommendations for journalists and media service providers." It is "an independent non-commercial organization that operates in accordance with Law No. 86/2020 on non-commercial organizations, the Code of Ethics of Journalists of the Republic of Moldova, its own statute and regulations, as well as national and international documents that establish ethical principles and norms of professional conduct for the media, along with international conventions and treaties relevant to journalistic activity" (Article 18(2)).

87. Notwithstanding the existing provisions, the legal status of the Press Council remains insufficiently defined. While it is formally a non-governmental entity, it is, at the same time, vested by law with specific public regulatory and administrative functions. During the meetings in Chişinău, the delegation was informed that the Press Council currently operates as the sole functioning non-governmental organisation representing journalists. According to interlocutors, the other two organisations in the sector are largely nominal in nature and cater to only a narrow segment of the journalistic community. Accordingly, the authorities and most civil society organisations found it reasonable and appropriate to formally designate the Press Council as the national self-regulatory authority for media service providers and journalists.

88. The involvement of private actors in carrying out public tasks can be compatible with international standards, provided that appropriate safeguards are in place. According to the Rule of Law Checklist, "[t]here are a number of areas where hybrid (State-private) actors or private entities exercise powers that traditionally have been the domain of State authorities [...] The Rule of Law must apply to such situations as well."<sup>76</sup> In this regard, it is essential to ensure that non-state entities which, wholly or partially, perform functions traditionally exercised by public authorities, and whose decisions have comparable impact on individuals, are subject to the principles of the Rule of Law and held accountable to the same degree as public bodies. In this context, judicial review of administrative acts is a core element of the Rule of Law.<sup>77</sup> The exercise of legislative and executive power should be reviewable for its constitutionality and legality by an independent and impartial judiciary.<sup>78</sup> The principle of supremacy of the law implies that there is effective judicial review of the conformity of the acts and decisions of the executive branch of government as well as the acts and decisions of independent agencies with the law.<sup>79</sup>

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<sup>76</sup> Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, benchmark II.A.8

<sup>77</sup> *Ibidem*, para. 18. See also Venice Commission, [CDL-AD\(2011\)003rev](#), Report on the rule of law, para. 41.

<sup>78</sup> Venice Commission, [CDL-AD\(2016\)007](#), *op. cit.*, para. 39

<sup>79</sup> *Ibidem*, benchmark II.A.1.vii.

89. The Venice Commission recommends that the role of the Press Council be more clearly defined, especially with regard to its enforcement powers and the legal effect of its decisions. Article 18 of the draft law on mass media should be further elaborated to clarify this status, for instance by explicitly stating that the Press Council is entrusted with public self-regulatory functions. It should be specified that its decisions, insofar as they affect the rights of journalists and media service providers, are subject to judicial review.<sup>80</sup>

### **3. The public broadcaster: Tele-Radio Moldova (TRM)**

#### **a. The Supervisory and Development Board**

90. The Supervisory and Development Board is an independent governing body established to oversee the functioning and strategic development of the national public media service provider. The Board is entrusted with a wide range of tasks under Article 45 of the AMSC. Article 43 of the amendments to the AMSC regulates the composition, appointment and qualifications of the Supervisory and Development Board. The composition is stipulated in Article 43(3) of the AMSC, which modifies the composition of the Board, with four members elected by the Audiovisual Council (instead of three members proposed by the parliamentary factions), whereas the Press Council shall elect five members (instead of four members proposed by civil society organisations). The necessary qualifications of the members are outlined in Article 43(1) and (2), with additional requirements concerning being familiar with the regulatory field of public audiovisual media service providers, including relevant national and European legislation, and a cooling-off period of two years from party membership and/or political affiliation. Article 43(4<sup>1</sup>) sets forth a selection procedure in the form of public competitions. Finally, the Audiovisual Council appoints the members of the Supervisory Board by a two-thirds vote of its members for a term of six years, renewable once (Articles 43(4<sup>2</sup>) and (5)).

91. The Venice Commission underscores that the independence of public service media must be guaranteed through legislation that ensures pluralism in its governance structures. This principle is firmly rooted in the jurisprudence of the ECtHR under Article 10 of the ECHR. A situation in which an economic or political actor is permitted to exert dominant influence over the audiovisual sector, thereby undermining editorial freedom, would constitute a serious violation of the right to freedom of expression. These concerns have also been echoed in decisions of national constitutional courts, which have stressed the need for legal guarantees to prevent the concentration of power in the media sector.<sup>81</sup>

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<sup>80</sup> *Ibidem*, paras. 18, 39, and benchmark II.A.1.vii.

<sup>81</sup> In Germany, the Federal Constitutional Court has issued several landmark rulings on the composition and functioning of supervisory bodies in public broadcasting, particularly in 1991, 2008, and 2014. The Court has consistently underlined the need for independence from state influence and the safeguarding of diversity of opinion. In 2008 (13th Broadcasting Decision), the Court stressed that the proximity of political parties to the state required strict limitations on their influence. In its 2014 judgment (14th Broadcasting Decision), it held that supervisory bodies must be composed of individuals reflecting a broad range of social perspectives, who act as 'trustees of the public interest' rather than representatives of specific groups. While the presence of persons affiliated with the state was not excluded, their proportion should not exceed one third of the total membership. This includes members of government, parliaments, political officials, and persons appointed to supervisory bodies by politicians. The Court has further required that independent members be selected taking due account of incompatibility rules, that rules be adopted to ensure their personal independence, and that steps be taken to prevent a possible 'petrification' in the composition of the bodies. Members must also be free from external instructions and the work of the bodies must respect a minimum level of transparency. See Federal Constitutional Court of Germany, 23 January 1991, *North Rhine-Westphalian Broadcasting Law*, BVerfGE 83, 238 (paras 330–334); 12 March 2008, *On the Permissibility of Interests Held by Political Parties in Private Broadcasting Companies*, BVerfGE 121, 30 (paras 51 et seq., 55); 25 March 2014, *On the Compatibility of the ZDF State Treaty with the Basic Law*, BVerfGE 136, 9 (para. 28 et seq.). In Austria, the Foundation Council of the Austrian Broadcasting Corporation (ORF) holds supervisory and strategic responsibilities, including appointing the Director General, and is composed of 35 members serving four-year terms. While the law requires high personal and professional qualifications and mandates independence from external instructions, it lacks sufficient safeguards to ensure pluralism in appointments, particularly regarding the nine members designated by the Federal Government. The Austrian Constitutional Court found that the existing legal framework does not adequately guarantee diversity in the

92. From the outset, the Venice Commission notes that control over the appointment is shared between the national media regulatory body, i.e. the Audiovisual Council, which plays a central role in this regard (the final appointment of the members), and the Press Council. The proposed appointment structure provides for only two appointing bodies of distinct legal nature. Four members are to be appointed by the Audiovisual Council which, as outlined above, is an independent public authority, and five members by the Press Council, which is a non-governmental organisation. Although the intention to reduce parliamentary control is commendable, this arrangement may undermine transparency and render the governance of the national public service broadcaster overly dependent on a single non-governmental entity.

93. On the one hand, the independence of the Supervisory Board will become dependent upon that of the Audiovisual Council. If the independence of the Audiovisual Council were to be compromised by any means and at any time, political influence on the Supervisory Board would be possible. Furthermore, since the Audiovisual Council already plays a crucial role, among others, regarding broadcasting licenses (it grants, suspends and withdraws them under Articles 25, 27, and 84<sup>1</sup> of the AMSC, as discussed above), its influence on the composition of the Supervisory Board could raise questions about the independence of the public service broadcaster from political control.

94. On the other hand, the involvement of the Press Council in the appointment process is highly unusual. The Press Council, as the national self-regulatory body for media service providers and journalists, is tasked primarily with maintaining editorial standards and ensuring content regulation within the press. Although it is formally independent, it has been already noted that the Press Council lacks institutional accountability mechanisms, and its composition is not sufficiently detailed in the law. Given the lack of guarantees for the pluralism of the Press Council, entrusting it with the appointment of more than half of the members of the public broadcaster's Board, without any clear procedures, obligations for transparency, nor procedural safeguards in place for the appointments, may in turn jeopardise pluralism of the Board and render it vulnerable to political and economic influence.

95. In view of these concerns, the Venice Commission recommends reconsidering the allocation of appointing authority between the Audiovisual Council and the Press Council. Limiting the participation of civil society organisations in the nomination process to the Press Council represents a regression in democratic participation. It is therefore recommended that the involvement of different civil society organisations in the appointment procedures of some members of the Supervisory Board be reinstated, ensuring representation of audience interests within the Board (in particular, the wider participation of non-governmental organisations promoting the rule of law, pluralistic democracy and human rights, i.e. the European values upheld by the national Constitution, the Council of Europe and the EU, could be considered). This could be achieved by increasing the number of independent entities entitled to appoint members, or by establishing a mixed appointment model which includes a defined quota of members appointed by Parliament, reflecting both the majority and the opposition.

96. Furthermore, according to the draft amendments, the Audiovisual Council and the Press Council issue a public invitation to participate in the competition for candidates for the positions of members of the Supervisory Board, publicising the criteria for filling the positions (Article 43(4<sup>1</sup>)(b)). The eligibility criteria for candidates should be those explicitly set in the law, rather than being confined to the competition announcement. Furthermore, the legal framework governing the selection procedure for the Supervisory Board should include procedural

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composition of the Council, leaving the selection process largely at the discretion of the appointing bodies and failing to ensure the pluralism necessary for true independence, as required under Article 10 of the ECHR. See Austrian Constitutional Court, 5 October 2023, [Case G 215/2022](#), sections 5.3. and 6.4.3, in particular 6.4.3.1.; see also section 6.4.4. See also the ruling of the Constitutional Court of Lithuania in fn. 82 below.

safeguards and appeal mechanisms to ensure fairness and transparency. They should include access to judicial review. The Venice Commission therefore recommends explicitly including all the eligibility criteria for Supervisory Board candidates in the law and ensuring fair and transparent selection through procedural safeguards and access to judicial review.

b. The Director-General

97. As concerns the Director-General of the public broadcaster, pursuant to the draft amendments to the AMSC this position is now appointed by the Supervisory and Development Board, instead of the Parliament (Article 36(3)). The amended provision also lists the relevant selection criteria, with due account to education, knowledge, and professional experience. The amended provisions also introduce a two-year cooling off period from political affiliation. The possibility to dismiss the Director General for improper or non-performance is repealed. Instead, the Director General can only be dismissed by the Supervisory and Development Board in cases of conviction by final court decision, loss of citizenship, or the establishment of a judicial protection measures, or due to the voluntary resignation (Article 37(10)). The Director General is appointed for a five-year mandate (instead of seven years), introducing the possibility for one renewable mandate (Article 37(1)).

98. The Venice Commission welcomes the proposed amendments concerning the appointment and dismissal of the Director General. Particularly, and despite the shortcomings regarding the composition of the Supervisory and Development Board outlined above, subjecting the appointment of the Director General to a public competition based on the “selection criteria” referred to above increases significantly the chances of founding such appointment on objective criteria.

99. Nevertheless, and it has been stated above, the criteria for the conduct of such competitions should be clearly outlined in the law, including with procedural safeguards and the possibility to appeal the decisions. As concerns the dismissal of the Director General, the Venice Commission also welcomes that the provisions allowing the parliament to dismiss the office-holder due to under- or non-performance are repealed. However, the grounds for dismissal due to final court decision should be limited to intentional crimes. As stated above, and whereas the possibility of renewal is not inherently incompatible with international legal standards, the mandate should be renewable only once insofar as renewable mandates raise concerns regarding the independence of the officeholder, particularly where the renewal process is controlled by the same body responsible for the original appointment. The Venice Commission recommends that the criteria for conducting the competition for the Director General of Teleradio Moldova be clearly outlined in the law and include procedural safeguards. To protect the officeholder’s independence, the mandate should remain renewable only once, and the grounds for dismissal due to court decision should be limited to intentional criminal offences.

c. Financing of the public broadcaster

100. The Venice Commission welcomes also the amendment to the regulation of budget of the public broadcaster (Article 41 of the AMSC) that aims to increase its independence from the Parliament, in particular to prevent the use by the latter of budgetary tool for political influence on the activities of the public broadcaster. The draft amendment proposes to increase possibility of revenues from commercial activities of the public broadcaster. The Venice Commission notes that there is no single model of financing public broadcasters (e.g., apart from the proposed model of revenues from limited commercial activities, there could be special levies or a fixed amount, in the form of a percentage) from the existing taxes. However, the financing of a public broadcaster has inevitable impact on both its institutional and editorial independence. Therefore, as noted by some national constitutional courts, the most important is that a national public broadcaster is allowed to receive revenues coming independently from the will of political authorities, in order to



ensure adequate financing in case of the decrease of subsidies from a state budget.<sup>82</sup> The proposed model of financing of the Moldovan public broadcaster seems to be appropriate for this purpose.

## **D. Regulation of the media**

### **1. Media pluralism and transparency of media ownership**

101. Article 4 of the draft law on mass media establishes media pluralism as a core principle, encompassing diversity of content, access for all social groups, support for ethical journalism, and transparency in media ownership and funding. The State is responsible for upholding this principle through legislation, financial support, promotion of media literacy, and protection of journalists. Public funding through the Media Subsidy Fund and state advertising aims to support media content that promotes social inclusion, cultural diversity, public interest topics, and democratic values. However, the provisions lack explicit reference to the promotion of the rule of law, pluralistic democracy, and respect for the Constitution, which reflect fundamental European values as upheld by the Council of Europe and the EU.

102. Articles 14 and 15 of the law on mass media, respectively, detail the provisions on financing of media services providers and impose transparency of their ownership. Article 14 regulates financing of media services providers. It stipulates that a “media service provider operates on a self-managed basis” (Articles 14 (1)) and provides a non-exhaustive list of sources of funding in para. (2), with Article 14(2)(g) allowing any sources not prohibited by law.

103. Article 15 of the draft law on mass media imposes on media services providers the obligation of transparency of media ownership. They must make easily accessible a broad range of information, including legal and editorial leadership, beneficial ownership, funding sources, conflicts of interest, and contact details, to ensure accountability and public trust. Similar provisions are found in Article 21 of the AMSC, under which media service providers are required to ensure that users have simple, direct, and permanent access to key information about their identity, ownership, management, editorial responsibility, and contact details. Whereas both provisions require media service providers to ensure easy, direct, and permanent access to core corporate and editorial information, the provision in the AMSC focuses more on compliance and reporting requirements, whereas those in the law on mass media include additional requirements relating to the disclosure of conflicts of interest and sources of funding.<sup>83</sup>

104. Despite their differences, the provisions are largely in line with international standards. Recommendation CM/Rec(2018)1 of the Committee of Ministers urges states to require disclosure of beneficial ownership, including indirect control and financial interests, and to make this information easily accessible through public registers.<sup>84</sup> Similarly, the EU, particularly through the 2024 EMFA, calls for mandatory transparency of media ownership and funding, alongside safeguards against political or economic interference. UNESCO and the OSCE also promote ownership transparency as a core democratic standard, stressing that states must ensure the

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<sup>82</sup> For example, in the case of Lithuania, the Constitutional Court noted that the legislature, implementing its discretion to choose the financing model of the national public broadcaster, is bound by the imperative of the national public broadcaster's independence, which is implied by its mission, arising from the Constitution. The Court argued that whatever financing model of the national public broadcaster is chosen, adequate financing of the national public broadcaster must be ensured, so as to enable the national public broadcaster to fulfil its constitutional mission effectively. See Constitutional Court of the Republic of Lithuania, 3 November 2020, [Case no 8/2019](#), On the laws providing for the financing of certain programmes, funds, or institutions, and in particular para. 69.

<sup>83</sup> In both cases, media service providers must ensure easy, direct, and permanent access to core corporate and editorial information, such as name, legal status, and registered office; legal representatives; beneficial owners; shareholders up to the level of natural persons (with exceptions); management and supervisory bodies; editorial policy and those responsible for it; and contact details (legal address, email, website, etc.).

<sup>84</sup> Committee of Ministers, [Recommendation CM/Rec\(2018\)1](#), *op. cit.*



public can identify the individuals or entities behind media content and assess potential biases or conflicts of interest.

105. The obligation to disclose all sources of funding (Article 15(2)(j)) seems however to go beyond international standards. Recommendation CM/Rec(2018)1 encourages States to “adopt and implement legislation or other equally effective measures that set out the disclosure of information on the sources of the media outlet’s funding obtained from State funding mechanisms (advertising, grants and loans).”<sup>85</sup> It also encourages them to “promote the disclosure by media outlets of contractual relations with other media or advertising companies and political parties that may have an influence on editorial independence.”<sup>86</sup> The Moldovan regulation imposes a more stringent obligation than Recommendation CM/Rec(2018)1, which focuses primarily on public funding and specific relationships that may impact editorial integrity. The Venice Commission therefore recommends balancing the provisions in Article 15 to ensure that the requirements imposed on media service providers are not too burdensome so as to impair media pluralism.

106. Article 16 of the law on mass media establishes a regulatory framework to prevent media market concentrations that could undermine media pluralism or editorial independence. Press publication providers are required to notify the Competition Council in advance of potential mergers (Article 16(2)(a) of the draft law on mass media). In the audiovisual sector, pursuant to the amended Article 28(11) of the AMSC, any natural or legal person intending to increase their quotas or acquire shares in the share capital or voting rights of a legal entity holding a broadcasting licence, or of an entity that controls such a licence holder, must obtain prior approval from the Audiovisual Council before completing the transaction. An exception applies in cases of inheritance, as set out in Article 28(13), where the obligation is limited to informing the Council within 30 days following the conclusion of the succession procedure.

107. The amended Article 75(3)(i) of the AMSC also entrusts the Audiovisual Council to develop and supervise methodologies for monitoring audiovisual pluralism and compliance with the rules on remedying situations relating to dominance in the formation of public opinion. Article 16 of the law on mass media also mandates the Competition Council to establish rules and procedures on concentration, but these apply only to press publication. Pursuant to this Article, the assessment should consider the potential effects on public opinion, diversity in the media landscape, editorial autonomy, and the financial viability of the parties involved. The process includes consultations with relevant authorities and mandates that all final decisions be publicly justified and published. The provisions in the draft law on mass media are in line with Recommendation CM/Rec(2018)1, which calls on member states to adopt specific media ownership rules distinct from general competition law. These rules should assess not only economic dominance but also the influence on public opinion, editorial control, and cross-media ownership. States are encouraged to evaluate both horizontal and vertical integration and consider transparency of ownership, audience reach, and the potential for monopolistic influence over content.<sup>87</sup> However, no such provisions in the AMSC ensure that the Audiovisual Council abides to these recommendations. Therefore, the Venice Commission recommends introducing equivalent provisions in the AMSC, or to alternatively broaden the scope of the provisions in the draft law on mass media so they apply to all types of media.

## **2. Registration of media service providers**

108. According to the draft law on mass media, the registration of media is double: first, as legal persons, they are registered within the Public Service Agency (Article 5(3)). The subsequent procedure of registration differs depending on the type of media. In the case of audiovisual media

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<sup>85</sup> *Ibidem*, para. 4.7.

<sup>86</sup> *Ibidem*, para. 4.7.

<sup>87</sup> *Ibidem*.

services, the broadcasting licence is issued by the Audiovisual Council under Articles 25(2) to (4) of the AMSC. The Audiovisual Council also establishes and maintains an updated register of video-sharing platform providers (Articles 61<sup>2</sup>(6) of the AMSC).

109. In the case of press publications (printed and online), and for the purposes of greater transparency, additional special registration within the Ministry of Culture is now required by the draft law on mass media (Article 7). Article 7(3) of the draft law states that the registration in the special Register is mandatory. However, the absence of registration would not automatically preclude the operation of a respective entity, though it would not acquire the rights and privileges of press publications according to laws, in particular the right to public subsidies. During the meetings in Chişinău, the delegation was informed that the authorities are considering making the registration voluntary, but conditional for benefiting from certain advantages (such as public media subsidies).

110. Article 7 of the draft law on mass media entrusts the responsibility for regulating the registration procedure, as well as for keeping and updating the registry, to the Ministry of Culture. The procedure of registration should be regulated by an act issued by the Ministry of Culture, which should be issued after the entry into force of the law. Overall, the Venice Commission notes the important mandate entrusted to the Ministry of Culture on matters related to media policies. Under Article 17 of the law on mass media, the Ministry of Culture serves as the national authority responsible for promoting media policies and enforcing the relevant law. It works in collaboration with both national and international bodies to fulfil its duties, including the Press Council. During the meetings in Chişinău, the Venice Commission was informed that it was the first time that a Department within a Ministry was entrusted with media policies. Despite having a limited number of staff, the delegation was informed that the Department is engaged in several projects and initiatives related to media, spanning from the Media Subsidy Fund to programmes on digital literacy.

111. As noted in its previous Opinions, the Venice Commission emphasises at the outset that the act of registration of media does not inherently contravene international standards.<sup>88</sup> However, this assertion holds true only under the condition that the registration process remains free from cumbersome, ambiguous, or superfluous prerequisites, and that it does not vest excessive discretion in the hands of state authorities. The ECtHR has made it clear that it disapproves of regulatory regimes that place unnecessary restrictions or administrative burdens on the media. In particular, it has found that although Article 10 of the ECHR does not in terms prohibit the imposition of prior restraints on publications, the relevant law must provide a clear indication of the circumstances in which such restraints are permissible, especially when the consequences of the restraint are to block publication completely.<sup>89</sup>

112. The visible defect of Article 7 of the draft law on mass media is that all the registration procedure of press publications is left to the regulation by the sub-statutory act of the Ministry of Culture. This approach raises two concerns in terms of the Rule of Law: legality and legal certainty. According to the principle of legality, when legislative power is delegated to the executive, the objectives, contents, and scope of the delegation should be explicitly defined in the legislative act.<sup>90</sup> In the absence of detailed provisions in the statutory law, the resulting regulation lacks legal certainty, both in terms of the foreseeability of the law and the protection of legitimate expectations.<sup>91</sup> For example, under Article 7(3), the Ministry of Culture has considerable discretion to go beyond the minimum requirements set out in paragraph (4), which would be also at odds with the condition that the registration process remains free from cumbersome, ambiguous, or superfluous prerequisites. Furthermore, some of the information

<sup>88</sup> Venice Commission, [CDL-AD\(2023\)040](#), *op cit.*, para. 51.

<sup>89</sup> ECtHR, *Observer and Guardian v. the United Kingdom*, Application no. [13585/88](#), 1991, para. 60; and ECtHR, *Cumpănă and Mazăre v. Romania* [GC], Application no. [33348/96](#), 2004, para. 118.

<sup>90</sup> Venice Commission, [CDL-AD\(2016\)007](#), *op cit.*, benchmark II.A.4.iii.

<sup>91</sup> *Ibidem*, benchmarks II.B.3 and II.B.5.

required by the law appears to conflict with international standards, particularly regarding the disclosure of sources and means of funding, as noted above (para. 103). Likewise, it is not clear whether the registration of press publications is automatic once all required information is submitted by the applicant, or whether there may be additional grounds for refusing registration. It is also unclear what the specific grounds would be for terminating or suspending a registration (Article 7(3) reads that the procedure for deletion of press publication from the Register is established in the Regulation by the Ministry of Culture, without providing any additional details on this procedure). During its meeting in Chişinău, the delegation was not informed of any details regarding the register, as the Regulation will only be adopted after the law is enacted. However, interlocutors confirmed that any rejection of a registration request may, in any case, be challenged before the Administrative Court of the Republic of Moldova.

113. Regardless of whether in the end the registration will be voluntary, and insofar as it will result in a legal status and acquired rights thereof, the Venice Commission recommends that the essential elements regarding the registration of press publications are provided by the law on mass media rather than by sub-statutory act by the Ministry of Culture, including any circumstances leading to de-registration. For the sake of ensuring transparency of media ownership, equivalent procedures should be established or harmonised for other types of media different than press publications, to the extent possible and considering the diversity in media services.

## **E. Journalists' activity**

### **1. Definition of journalist**

114. Article 1 of the draft law on mass media provides a definition of journalist. According to the draft, a journalist is “an individual creator of media content who, on a regular and direct basis, carries out activities of gathering information of public and/or social-general interest from any relevant source, writing and editing this information in any form - text, photography, video and/or audio recording, drawing, graphics, etc., for public dissemination in any way, including through the mass media, for informational, educational or recreational purposes, respecting the ethical and deontological rules of the profession.” Article 10 of the draft law on mass media clarifies that the activity can be carried out on the basis of a contract with a media service provider or as a freelance journalist.

115. In its recent Opinion on media legislation in Armenia, the Venice Commission referred to several international documents and case law of the ECtHR in order to establish whether the definition of journalists was in line with international standards.<sup>92</sup> According to Recommendation No. R(2000)7 of the Committee of Ministers, a journalist is “any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.”<sup>93</sup> Since 2000, a more flexible approach to the status of journalists is chosen on an international level as well as in national legislation. According to Recommendation CM/Rec(2016)4, “the definition of media actors has expanded as a result of new forms of media in the digital age. It therefore includes others who contribute to public debate and who perform journalistic activities or fulfil public watchdog functions.”<sup>94</sup> The UN Human Rights Committee defines journalism as “a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”<sup>95</sup>

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<sup>92</sup> Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op. cit.*, paras. 53-59.

<sup>93</sup> Committee of Ministers, [Recommendation No. R\(2000\)7](#) to Member States on the Right of Journalists not to Disclose their Sources of Information.

<sup>94</sup> Committee of Ministers, [Recommendation CM/Rec\(2016\)4](#) to Member States on the Protection of Journalism and Safety of Journalists and other media actors, para. 4.

<sup>95</sup> UN Human Rights Committee, [General comment No.34 on Article 19](#), para. 44.

116. Against this background, the Venice Commission emphasised that, since the definition of “journalist” has significant implications for the individuals involved, this concept should be defined and interpreted broadly, extending the media’s democratic oversight of authorities and other power holders to encompass the widest possible range of journalistic activities. This includes any individual engaged in seeking and disseminating information within the “free exchange of opinions and ideas”, which upholds the public’s right to receive such material and be adequately informed.<sup>96</sup>

117. A definition which would exclude journalists without an employment or individually based contractor agreement (most freelancers) would be overly restrictive. Among several disadvantages, journalists not covered would not be able to register and would not be accredited.<sup>97</sup> Furthermore, the digital communication opportunities of today mean that journalism can no longer be viewed as the exclusive domain of news organisations. Consequently, the distinction between a “professional journalist” employed by a news outlet and other individuals producing journalistic content has become increasingly blurred. Therefore, such privilege should be based on functional criteria, such as the dissemination of information and ideas in the public interest, rather than a formal definition of a journalist.

118. The Moldovan draft definition of “journalist” generally aligns with international standards by adopting a functional approach that emphasises the gathering and dissemination of information in the public interest across various media formats. Different from other definitions criticised by the Venice Commission, the Moldovan draft law on mass media does not refer to “professional activity” and is, in general, broader, including journalists working contract-based as well as freelance journalists. It also seems to include both profit-oriented and other activities.

119. Despite the above, the definition in the draft law on mass media still introduces limiting elements, such as the requirement that journalistic activity be carried out “on a regular and direct basis” and in accordance with ethical and deontological rules, that may put its inclusivity in question. These conditions could exclude non-traditional actors like citizen journalists, bloggers, or occasional contributors, who are recognised under international human rights law as deserving of protection when performing journalistic functions. The Venice Commission therefore recommends reviewing the definition of “journalist” in this respect to ensure its inclusivity.

## **2. Rights and obligations of journalists**

120. Article 11 of the draft law on mass media regulates the professional autonomy of journalists and editorial independence. Accordingly, journalists have the right to refuse to develop media content that contravenes the norms, criteria and professional and ethical standards of journalism without being sanctioned. They may not be dismissed due to the expression of opinions and ideas in accordance with the editorial policy of the media service provider, with the professional norms and with the applicable ethical standards. Journalists also have the right not to disclose the identity of the source from whom they have obtained information.

121. Article 13 of the draft law on mass media sets forth a detailed list of rights and obligations of Moldovan and foreign journalists. These include the rights to information of public interest from information providers; to protect the confidentiality of sources; to have free access to official sources of information (including by public authorities); to express themselves freely; to benefit from protection against intimidation or harassment, and to refuse to produce materials that contravene ethical principles. Journalists may not be denied accreditation for any event organised

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<sup>96</sup> ECtHR, *Gillberg v. Sweden* [GC], Application no. [41723/06](#), 2012, para. 95, 3 April 2012. Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)009](#), *op cit.*, para. 46.

<sup>97</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)009](#), *op cit.*, paras 46 and 53.

by public sector entities/authorities or an event organised by other entities that involves the participation of media representatives. As to obligations, according to paras (3) and (8), before publishing information, a journalist is obliged to verify origin, veracity, and completeness of the information. Journalists have the obligation, among others, to respect ethical principles; ensure the accuracy, impartiality and balance of the information presented, including verification of sources and avoidance of distortion of facts and to respect the confidentiality of information sources. Also, they must respect fundamental human rights; promote pluralism and diversity of opinions; use only legal and ethical means to obtain information; prevent and combat the dissemination of hate speech, racism etc and consider plagiarism, slander, acceptance of illicit remuneration etc. as serious professional misconduct.

122. The draft law on mass media regulates rights and obligations of journalists in detail. The list appears to be comprehensive enough, and sufficient provisions are set forth in order to ensure the rights of journalists, also against the background of the EMFA. According to Recital No. 14 of the EMFA, recipients of media services should be able to access quality media services which have been produced by journalists in an independent manner and in line with ethical and journalistic standards. Access to quality media services should be ensured by preventing attempts to silence journalists, ranging from threats and harassment to censorship and cancelling of dissenting opinions. Recital No. 19 states that the basis for the production of trustworthy media content are sources. Therefore, it is crucial to protect journalists' ability to collect, fact-check and analyse information. Journalists should be able to rely on a robust protection of journalistic sources and confidential communications, including protection against undue interference and the deployment of surveillance technologies. Against this background it is not clear from Art. 13 of the draft law on mass media whether any responsibility of information providers exists for the ungrounded refusal to give information of public interest to journalists, i.e. for a violation of the right of journalist provided in Art. 13(1)(a). Therefore, the Venice Commission recommends explicitly establishing responsibilities in cases of unjustified refusal to provide journalists with information of public interest, as required under Article 13(1)(a).

123. With regard to the deployment of surveillance technologies, Article 9(1)(c) of the amendments to the AMSC and Article 8(3)(c) of the draft law on mass media prevent the State from installing spyware on the devices of journalists, media service providers, and editorial staff. These provisions recognise the important role of source protection.<sup>98</sup> Article 8(3)(c) of the draft law on mass media establishes detailed reasons for exceptions from this prohibition (e.g. in the context of the criminal prosecution of particularly serious crimes), whilst Article 8(4) ensures proportionality, namely, by stating that restrictions must be provided for by law and be necessary in a democratic society in the interests of national security, territorial integrity, for the prevention of crime etc.

124. This complies to a great extent with what has been stated in recent documents of the Venice Commission, where it stated that "legislation should narrowly define the possible targets of the surveillance measures, and provide that certain categories of persons whose interactions may be protected by professional privilege as well as journalists are in principle excluded, with certain limited exceptions. When it is alleged on justified grounds that such persons are committing a specific, defined and serious offence and are posing a defined specific threat to national security, and that court ordered investigation is thus necessary, the Venice Commission considers, in line with the case-law of the ECtHR, that strongly enhanced standards must apply, including higher

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<sup>98</sup> This principle stems from Article 4(3) of the EMFA, which prescribes that States shall ensure that journalistic sources and confidential communications are effectively protected. *Inter alia*, States shall not oblige media service providers or their staff to disclose information related to journalistic sources and, in particular, they shall not deploy intrusive surveillance software on any material used by media service providers, their editorial staff or any persons who might have information related to journalistic sources or confidential communications.

thresholds before approving surveillance operations and more demanding internal and external oversight.”<sup>99</sup>

125. Despite the above, it seems that the draft laws do not provide sufficiently for an equivalent to a judicial authorisation or an oversight mechanism, which is problematic. Furthermore, the provision in Article 9(1)(c) of the amendments to the AMSC is rather undetailed and does neither provide for exceptions to the prohibition of interference, nor establish any criteria related to proportionality. It also has a different scope of protection than Article 8(3)(c) of the draft law on mass media, in particular because the latter applies to media service providers in general, whereas the AMSC refers to audiovisual media service providers only.

126. The Venice Commission recommends that any interference with the activities of media service providers, including the deployment of surveillance technologies, be subject to clearly defined legal conditions, including prior or prompt judicial or independent authorisation, effective oversight, and strict adherence to the principles of legality, necessity, and proportionality. The relevant provisions should be harmonised across the different draft laws to ensure equal and adequate guarantees for all journalists, no matter the type of media.

### **3. Registration of freelance journalists**

127. Article 12 of the draft law on mass media creates a register for freelance journalists, and the status of freelance journalists is only acquired upon registering on it (Article 12(1)). Whereas the provisions in the draft law examined by the Venice Commission state that the registration is mandatory, the delegation was informed by the authorities during the meetings in Chişinău that they were considering making registration voluntary, but conditional to grant freelance journalists certain advantages (such as making them eligible to receive public funding or being accredited with the same rights and access granted to election observers), or speeding the related procedures.

128. The Register also falls under the purview of the Ministry of Culture which, similarly to the Register of press publications, is managed in accordance with a Regulation approved by the Ministry (Article 12(2) of the law on mass media). Several conditions must be met cumulatively to be registered, including providing evidence of carrying out activities specific to journalism; carrying out journalistic activity full-time or part-time, as their basic or main activity; not engaging in activities incompatible with the profession (Article 12(3)). As an alternative to these criteria, registration is possible when the Press Council has issued a corresponding opinion (Article 12(4)). The application shall contain name, date and place of birth, domicile or residence; the place of activity and the nationality (Article 12(5)). Freelance journalists who have not undertaken to comply with the Code of Ethics of Journalists cannot be registered (Article 12(8)).

129. The Venice Commission has stressed that accreditation must, in principle, not be a prerequisite for exercising journalistic activities, which are protected by freedom of expression and the right to access information, in particular when it is not specified.<sup>100</sup> Consequently, introducing mandatory registration as a requirement for obtaining the status of freelance journalist is not only discouraged, but risks constituting an undue restriction incompatible with these fundamental rights. In this regard, the UN Human Rights Committee's General Comment No. 34 prescribes that “[j]ournalism is a function shared by a wide range of actors, including professional

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<sup>99</sup> Venice Commission, [CDL-AD\(2024\)043](#), Report on a rule of law and human rights compliant regulation of spyware, paras. 93-96. The Commission emphasises that such measures are only permissible in the most exceptional circumstances due to journalism's watchdog role. Tools like Pegasus pose serious risks to journalists' privacy, source protection, and freedom of expression. Legislation must narrowly define surveillance targets, generally exclude journalists, and apply stringent safeguards where surveillance is justified in exceptional cases.

<sup>100</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)009](#), *op. cit.*, para. 50; Venice Commission and the Directorate General of Democracy and Human Dignity (DGII), [CDL-AD\(2024\)030](#), *op. cit.*, para. 92.



full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3 [of Article 19 ICCPR].”<sup>101</sup> Against the background of these previous Opinions and international standards, Article 12 of the draft law on mass media raises concerns and the Venice Commission recommends reconsidering the registration of freelance journalists. Mandatory registration should not be a requirement to acquire the status of freelance journalist.

130. Notwithstanding the above, should the authorities proceed with the introduction of a voluntary registration system, it is imperative that the associated requirements remain proportionate and not unduly burdensome. As previously mentioned, the registration of freelance journalists as currently detailed under Article 12 of the draft law on mass media, even if on a voluntary basis, raises concerns related to both the principles of legality and legal certainty.<sup>102</sup> The legal framework should be revisited to ensure that all procedural and substantive conditions for registration are clearly established by law and not left to be determined by an executive authority such as the Ministry of Culture. Despite the provisions in Article 17(2) of the draft law on mass media, the relationship (if any) of the Press Council with the Ministry of Culture regarding the Register of freelance journalists could be further clarified. Given the function of journalists as public watchdogs in a democratic society, the collection of detailed personal data by state authorities as part of the registration process may give rise to systemic risks, including potential interference with journalistic independence and chilling effects.<sup>103</sup> Therefore, consideration should be given to entrusting the maintenance of such a register to an independent body, preferably one grounded in the principles of self-regulation.

131. It is also essential to ensure that any registration requirements do not impose disproportionate burdens that could restrict access to journalistic status for a wide range of actors. For instance, conditioning registration on journalism being the applicant’s primary or main occupation appears unduly restrictive, as journalistic activity may legitimately be pursued on a part-time or secondary basis. Similarly, requiring proof of engagement in journalistic activities risks excluding emerging or non-traditional media actors and thereby undermining media pluralism. The provision barring registration to those who do not explicitly adhere to a specific Code of Ethics could likewise pose an unjustified obstacle to pluralism and editorial diversity.

## **F. State advertisement**

132. The draft amendment to the Law on advertising devotes a special section, Chapter II<sup>1</sup>, to state advertisement. State advertising refers to paid promotional or informational content disseminated by or on behalf of public sector entities through media services or online platforms, based on formal contracts. Public funds for state advertising must be allocated through transparent, objective, and non-discriminatory procedures, using publicly known criteria. If annual advertising spending exceeds 100,000 lei, a public tender must be announced in the Public Procurement Bulletin. Both public institutions and media providers are required to publish annual reports detailing spending and service providers. The Public Procurement Agency oversees compliance and publishes its own annual report on state advertising procurement.

133. There are no binding international instruments specifically governing state advertising, but several international organisations have developed non-binding standards that promote transparency, accountability, and ethical conduct in public communication. The Council of Europe thus calls for transparency, editorial independence, and the fair allocation of public resources in

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<sup>101</sup> UN Human Rights Committee, [General comment No.34 on Article 19](#), para. 44.

<sup>102</sup> Venice Commission, [CDL-AD\(2016\)007](#), *op cit.*, benchmarks II.A.4.iii., II.B.3, and II.B.5..

<sup>103</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2022\)009](#), *op cit.*, para. 50

state advertising.<sup>104</sup> It calls for state-sponsored messages to be clearly labelled, non-partisan, and free from political interference, especially during elections. These standards also discourage media capture by urging governments not to use advertising funds to influence media outlets.

134. The Moldovan regulation is in principle in line with these standards. It defines state advertising clearly, differentiates it from urgent public announcements made in the public interest, and requires that such advertising be paid and contracted transparently. The inclusion of labelling requirements and content identification ensures compliance with the Council of Europe's Recommendation CM/Rec(2022)11.

135. The draft respects the principle of non-partisanship by indicating how state advertising may be used during electoral periods. By means of Article 11<sup>1</sup>(4) of the draft Law on Media, "during the electoral period, state advertising shall be broadcasted under the conditions provided for in Article 17(2)". Article 17(2) indicates that "during the electoral period of general elections, only public interest messages approved by the Central Electoral Commission shall be broadcast."

136. The procedure of and conditions for approval are regulated by Article 90(4) of the Electoral Code and Regulation on the procedure for the dissemination and broadcasting of political and electoral advertising and messages of public interest adopted by the CEC on 4 August 2023 (Regulation No. HCEC1155/2023). In accordance with the Regulations, the CEC Chairperson forms a working group, which will have to give within three days its opinion on the messages sent by state institutions. After that, the CEC will have three more days to make a decision regarding the publication of messages from various institutions. The restriction seeks to prevent the use of public resources for partisan political purposes. This is in line with international standards, which emphasize that public communication, during sensitive periods of elections, should be free from political bias and used only to inform the public on matters of essential public interest.

137. It however remains unclear whether the decisions of the CEC are subject to judicial scrutiny. Article 90(11) of the Electoral Code, stipulating that "the refusal to broadcast or publish, under the conditions laid down in this Code, paid or free of charge electoral advertising may be challenged before the Court", does not seem to apply to political advertising and public interest messages.

138. The procedures for allocating public funds, based on transparent, objective, and non-discriminatory criteria, are generally consistent with international standards. By requiring open tendering for contracts which exceed a set threshold and mandating public reporting by both state institutions and media providers, the regulation promotes transparency, in line with the Guidance Note on Public Interest Content. The designation of a monitoring authority (the Public Procurement Agency) ensures oversight.

#### **IV. Conclusion**

139. By letter of 27 March 2025, Mr Igor Grosu, President of the Parliament of the Republic of Moldova, requested an opinion of the Venice Commission of the Council of Europe on a legislative package on mass media regulation, which includes the draft law on mass media, the draft law amending the AMSC, and the draft law amending the Law on advertising.

140. The amendments to the AMSC aim to ensure a level playing field for media providers, including video-sharing platforms, along with stricter oversight of disinformation and hatred. Most important, they address the concerns about the independence of regulatory and public bodies. The amendments to the Law on advertising seek to improve transparency and fairness in

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<sup>104</sup> See Committee of Ministers, [Recommendation CM/Rec\(2022\)11](#), *op. cit.*; and Steering Committee on Media and Information Society of the Council of Europe, [CDMSI\(2021\)009](#), Guidance Note on the Prioritisation of Public Interest Content Online, 2 December 2021.

advertising. The proposed law on mass media is meant to consolidate and harmonise existing media regulations, including print, online, and audiovisual media. It focuses on enhancing media pluralism, improving public access to information, and increasing the transparency of media ownership. New provisions on journalists' activity, rights, and obligations are to be found both in the amendments to the AMSC and the draft law on mass media.

141. The key international standards safeguarding media freedom and pluralism are enshrined *inter alia* in Article 10 of the ECHR, as interpreted by the ECtHR. The ECtHR has emphasised that states have both negative and positive obligations to protect freedom of expression, particularly in the audiovisual sector, including ensuring genuine pluralism, preventing dominance by powerful political or economic actors, and guaranteeing public access to diverse viewpoints. The Committee of Ministers of the Council of Europe stresses the importance of editorial independence, media pluralism, and transparency of media ownership as vital safeguards. Furthermore, the standards of the Council of Europe and the Venice Commission in its Opinions have stressed the importance of transparent, merit-based appointment and dismissal procedures for regulatory authorities, free from political interference, and underlined the essential role of independent and well-supported self-regulatory mechanisms, such as press and media councils, in promoting media accountability and professional standards, particularly in the digital environment.

142. From the outset, the Venice Commission welcomes that its previous recommendations have been partly implemented, by deleting vague and general terms such as "propaganda of military aggression", "extremist content", "content of a terrorist nature" from the list of prohibited contents, and that the term "information security" has been replaced with "national security". The Venice Commission also notes that the texts under examination now propose repealing the provisions of Article 17(4) of the AMSC, which forbid to broadcast audiovisual programmes of any informative, informative-analytical, military and political content produced outside the EU and states that that have not ratified the ECTT, except for programmes without militaristic content. However, it also notes that other recommendations remain outstanding.

143. The Venice Commission welcomes the aim of ensuring the independence of the Audiovisual Council and the public broadcaster, Teleradio Moldova. The Venice Commission finds that the proposed amendments on the composition and appointment of independent bodies have the potential to strengthen the role of regulatory bodies. Notwithstanding these improvements, further legal provisions should be introduced to ensure the transparency of public selection processes, mitigate the risk of political interference, and incorporate essential procedural safeguards.

144. The Venice Commission notes the efforts to harmonise the Moldovan legal framework with the EU standards in the field of audiovisual media, media freedom, rights and obligations of journalists, and state advertising. The objectives of ensuring transparency of media ownership and promoting media pluralism are commendable. Nonetheless, the Venice Commission continues to identify certain gaps when assessed against the standards of the Council of Europe. Furthermore, the Venice Commission notes that several provisions related to the registration of media service providers and freelance journalists are left to by-laws and regulations.

145. The Venice Commission therefore makes the following key recommendations:

- The material scope and related definitions of the legislative package should be revised and harmonised to avoid legal gaps and overlapping regulatory scopes, and in particular the definitions of "media" and "press publication".
- The appointment method of the Supervisory and Development Board of Teleradio Moldova between the Audiovisual Council and the Press Council should be reconsidered. It is recommended that the involvement of different civil society organisations in the

appointment procedures of some members of this Board be reinstated, ensuring representation of audience interests within the Board.

- The law should further specify the criteria and procedures for appointing members to the Audiovisual Council proposed by civil society organisations, for the Supervisory and Development Board of the public broadcaster, as well as for its Director-General, with a view to reduce discretionary authority and to establish procedural safeguards.
- The role of the Press Council should be more clearly defined, especially with regard to its enforcement powers and the legal effect of its decisions. It should be specified that its decisions, insofar as they affect the rights of journalists and media service providers, are subject to judicial review.
- Media service providers affected by serious sanctions, particularly in the case of suspension or termination of broadcasting, should be granted sufficient time to initiate court proceedings, and such measures should be suspended until a court decides on whether they should remain in force. Additionally, courts should have the authority to suspend the enforcement of any sanction at any stage, regardless of its nature or severity. The possibility to suspend audiovisual media services under Article 17<sup>1</sup>(6) of the AMSC should be brought in line with the sanction regime in Article 84<sup>1</sup>.
- Provisions on the registration of freelance journalists in Article 12 of the draft law on mass media raise concerns and should be reconsidered. Mandatory registration should not be a requirement to acquire the status of freelance journalist. The rights of journalists, particularly as concerns the deployment of surveillance technologies, should be brought in line with international standards, and responsibilities should be explicitly established in cases of unjustified refusal to provide journalists with information of public interest.
- The essential elements regarding the registration of press publications should be provided in the law on mass media, rather than by a sub-statutory act of the Ministry of Culture.

146. The following recommendation of the 2022 Opinion also remain to be implemented:

- Amending Article 5(2) of the AMSC and further clarifying which quality standards apply in order to determine from which countries audiovisual programmes can be purchased

147. In addition to the aforementioned key recommendations, the Venice Commission also advises a throughout harmonisation of the provisions in the legislative package concerning the obligations of media service providers, audiovisual media service providers, video-sharing platforms, and press publications, *inter alia* on matters related to transparency of ownership, registration, and assessment of media concentration, including the obligations to notify their intention to be a party to a possible concentration. Additionally, transparency requirements for media service providers pursuant to Article 15 of the law on mass media should be balanced, to ensure that they do not impair media pluralism. The Venice Commission also recommends reviewing the definitions of “media” and “journalist” to include citizen journalists, bloggers, or occasional contributors, who are recognised under international human rights law as deserving of protection when performing journalistic functions. Furthermore, the powers of the Audiovisual Council regarding disinformation and quality information should be clearly defined to ensure legal predictability, prevent excessive discretion, and safeguard freedom of expression by avoiding chilling effects.

148. Other recommendations may be found in the body of the Opinion.

149. The Venice Commission remains at the disposal of the Moldovan authorities for further assistance in this matter.