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JOINT OPINION ON THE DRAFT INFORMATION CODE OF THE REPUBLIC OF UZBEKISTAN

Uzbekistan

This legal analysis was prepared jointly by the Office of the OSCE Representative on Freedom of the Media and by the OSCE Office for Democratic Institutions and Human Rights.

This Joint Opinion has benefited from contributions made by Dr. Kanstantsin Dzehtsiarou, Professor in Human Rights Law and Associate Dean for Research and Impact, School of Law and Social Justice, University of Liverpool; Ms. Nevena Krivokapić Martinović, Attorney at Law specialized on media, intellectual property and IT law; and Ms. Alice Thomas, International Human Rights and Legal Expert.

Based on an unofficial English translation of the Draft Code provided by the Permanent Mission of the Republic of Uzbekistan to the OSCE.

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00
www.legislationline.org

Office of the OSCE Representative on Freedom of the Media

Wallnerstrasse 6, 1010 Vienna, Austria
Office: +43 1 514 36 6800
https://www.osce.org/representative-on-freedom-of-media

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The right to freedom of expression and to receive and impart information is a fundamental right as well as an enabler of other human rights and a guardian of democratic values. It is enshrined in several key human rights documents including the International Covenant on Civil and Political Rights (ICCPR) and OSCE human dimension commitments. The full enjoyment of this right, from which freedom of the media is derived, is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups - including marginalized and underrepresented segments of society - with different backgrounds and beliefs can voice their opinions and participate freely in public affairs. The right to freedom of expression, along with the existence of free, independent and pluralistic media, is also necessary for facilitating the effective participation of citizens in the conduct of public affairs and holding government accountable. Any restriction on this right must meet the strict test under Article 19(3) of the ICCPR, namely it must be provided by law, be necessary to ensure respect of the rights or reputations of others or for the protection of national security, public order (*ordre public*) or public health or morals, and be proportionate to those goals. In addition, such restrictions must not be discriminatory.

The Draft Information Code of the Republic of Uzbekistan (hereinafter the "Draft Code") developed by the Agency of Information and Mass Communication under the Administration of the President of the Republic of Uzbekistan aims to amend and codify eight existing laws regulating the mass media, freedom of expression, access to information and journalist activities.

Several of the principles set out in the Draft Code are positive and go in the right direction, notably the right to free use of information for everyone and the protection of everyone in their right to search for, receive, examine, distribute, use and store information without discrimination. Likewise, the prohibition of censorship and of media monopolization, as well as the prevalence of international agreements of the Republic of Uzbekistan over the national legislation related to freedom of information are welcome signals in relation to human rights protection in this country. At the same time, a number of provisions raise serious concerns, as they do not duly correspond to internationally recognized freedom of expression standards and good practices in the OSCE region.

Most notably, the regulatory system contemplated by the Draft Code fails to take into account the differences between print and broadcast media and the Internet. In particular, the press and online media should be excluded from the scope of compulsory registration; a voluntary registration or notification procedure for press

and online outlets could be proposed instead, in line with international recommendations and good practices.

Moreover, the requirement not only to check the accuracy of information but also to guarantee that all information distributed by all types of media is accurate and truthful as an end result, along with the legal liability of media outlets, journalists and bloggers for disseminating false information, is broad, disproportionate and may be misused, potentially creating a chilling effect on media freedom in Uzbekistan. It is also important to reiterate that no one should bear strict liability for inaccurate statements of fact that are published or disseminated when one has acted reasonably and in good faith when verifying the accuracy of information and disseminating such information. Moreover, a graduated and differentiated approach towards the legal obligations applicable in terms of checking facts and the accuracy of information should be envisaged, depending on the type of media and their level of professional capacity and outreach.

Importantly, certain content restrictions proposed in the Draft Code are problematic from the point of view of freedom of expression, since they do not comply with the strict test of Article 19(3) of the ICCPR. Notably, they either do not appear to pursue a legitimate aim and/or are not formulated in a clear and precise manner and/or are not necessary and proportionate. In particular, the use of overbroad terms such as “extremism”, “fundamentalism”, “separatism” and the prohibition of information inciting participation in unauthorized assemblies – without requirement that such acts must be clearly linked to an element of violence or other criminal means, or incitement to violence defined in accordance with international human rights standards – or denying so-called “family values”, may undermine the exercise of the right to freedom of expression, including the right to receive and impart information, fulfillment of national minority rights and/or other rights or freedoms, and the principle of non-discrimination.

The Draft Code also does not introduce an independent media regulatory body; instead, media regulation is fully concentrated under government bodies which are also not clearly identified. In addition, the vague and overbroad grounds for suspending or terminating the activity of media outlets is likely to produce a chilling effect on media freedom. State media with *inter alia* public-relations-like function seem to be retained in the Draft Code while it is recommended to transform them into a genuine public service media system. Lastly, the absence of objective standards guiding accreditation bodies in defining their accreditation rules for journalists, coupled with no mentioning in the Draft Code of any recourse mechanism which should be available for domestic journalists in cases of refusal of accreditation, may result in arbitrary accreditation by state institutions.

More specifically, ODIHR and RFoM make the following recommendations to ensure the compliance of the Draft Code with international human rights standards and OSCE human dimension commitments:

A. To more clearly specify the purpose of the Draft Code, while clarifying the legal consequences of its adoption on relevant existing laws to ensure the coherence of the legal framework in this field; [para. 21]

B. To ensure that classification of information as secret or confidential is strictly limited to cases where there are serious and weighty reasons for non-disclosure to protect legitimate goals as stipulated in Article 19 (3) of the ICCPR, where such information threatens to cause substantial harm, and such threat outweighs the public interest in information disclosure, while ensuring that the refusal to disclose public information can be appealed before an independent body and/or a court; [paras. 28 and 29]

C. To reconsider the provisions of the Draft Code regarding the prevention of and liability for disseminating false or inaccurate information, ensuring that no one bears strict liability for inaccurate statements of fact that are published or disseminated when one has acted reasonably and in good faith when verifying the accuracy of information and disseminating such information, while providing for a graduated and differentiated approach towards the legal obligations applicable in terms of checking facts and the accuracy of information, depending on the type of media and their level of professional capacity and outreach; [para. 34]

D. To more narrowly define key terms such as that of mass media and ensure that the Draft Code only regulates professional, institutionalized mass media outlets, by excluding from its scope the likes of non-professional publications, personal blogs and personal social media pages or accounts; [paras. 37, 39 and 40]

E. Regarding the right of access to information:

   1. To supplement Article 10 so that it protects access to information for everyone equally, including persons of different colour, opinions, birth, all types of sexual orientation or gender identity, and other status; [para. 44]
   2. To remove from Articles 10 and 12 the references to associations and enterprises as potential duty bearers of the obligation to provide access to information, unless they carry out statutory or public functions, receive public funding or are in possession of public information; [para. 45]
   3. To separate the tasks of promoting the public authority and its work and providing public information to individuals, and allocate them to distinct units within a public authority or organization; [para. 48]

F. Regarding the regulation of mass media:

   1. To re-assess the restrictions concerning media ownership and to consider narrowing the scope of the restriction for foreign ownership to what is considered justified and proportionate; [para. 52]
   2. To reconsider entirely the content restrictions imposed for the online formats of print publications included in Article 86; [para. 54]

G. To considerably narrow the scope of the content-based restrictions provided in the Draft Code to avoid imposing undue and excessive limitations over media content, including by:

   1. Removing all the restriction grounds that are overly broad and vague and/or do not appear to pursue legitimate aims for restricting freedom of expression and/or are not necessary under international human rights law, including: language norms (Article 90); speculation on the outcome of judicial cases (Article 70); unlawful influence or manipulation of social consciousness (Article 123); incitement to participate in unauthorized meetings (Article 128(3)); promotion of "extremism", "fundamentalism" and "separatism" - unless clearly linked to some elements of violence or other criminal means or incitement to violence defined in accordance with international human rights standards (Article 128(5)); denying family values and forming a disrespectful attitude towards parents and other family members (Article 128(10)); and disrespect towards society, the state or state symbols (Article 128(8)); [paras. 57, 59, 60 62, 64, 66-68, and 76]
   2. Clearly defining in Article 125 the types of information considered harmful to children, and specifying the types of locations where such information should not be distributed very clearly and narrowly; [para. 63]
   3. Specifying that restrictions on media content for respect of the rights or reputation of others are only permissible if, in individual cases, the disclosure of certain information threatens to cause substantial harm to the protected interests, and if the harm outweighs the public interest in disclosure, while ensuring that any prohibition aimed at protecting the honour or dignity does not apply to statements intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics or some other issues of public interest (Article 70(2) and 128(7)); [para. 72]
   4. Removing the general obligations applicable to all media outlets related to proactive monitoring of content (Article 128(14) and (15)); [para. 78]

H. Regarding compulsory registration:

   1. To adopt a graduated and differentiated approach to media governance depending on the type of media to be regulated, and to limit the compulsory registration only to media outlets using scarce infrastructure technologies (such as terrestrial frequencies) while applying a simple system of notification for other media outlets; [para. 83]
   2. To outline the main elements of the registration procedure in the Draft Code, while ensuring that the registration procedure is neither unduly cumbersome nor subject to arbitrary interpretation and/or application and does not require information or documents that go beyond what is strictly necessary; [para. 85]

I. To clearly, narrowly and exhaustively define the grounds for suspension and termination of mass media listed in Article 83 and ensure that such sanctions are treated as measures of last resort and are proportionate to the violations that were committed, while significantly extending the period of inactivity which may trigger suspension or termination, for example to one year or more; [para. 88 and 93]

J. To consider establishing a separate independent media regulatory body, which would be effective and independent both in law and in practice, while also promoting media self-regulation; [para. 98]

K. Regarding the status, rights and accreditation of journalists:

   1. To revisit, in Article 2, the definition of journalists and adapt it to a broader, more internationally accepted definition, to ensure that professional full-time reporters and analysts, as well as others who engage in forms of self-publication in print, on the internet, or elsewhere, could also be considered as performing journalistic function and hence, benefit from the protection afforded by the national legislation and international human rights law; [para. 99]

   2. To revise Articles 105 and 107 to ensure that the right of journalist not to disclose their source of information is framed as a positive right; [para. 102]

   3. To make the accreditation process for journalists in Article 112 accessible, transparent and inclusive, while ensuring that the respective rules are publicly disclosed and the grounds for refusal clearly defined with a possibility of effective appeal; unaffiliated journalists should also have the right to be accredited; [para. 106]

L. To consider excluding references to the state media from the current Draft Code, to consider the possibility of transformation of all state media into genuine public service media and develop and adopt specific legislation to this end; [para. 107]

M. To revise the entire Chapter 16, by either reformulating the respective violations in greater detail and clearly and narrowly defining the respective sanctions, or by introducing clear references to other laws, criminal, administrative or civil, that outline the actual prohibited behaviour and the respective consequences with more precision; [para. 112].

These and additional recommendations are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 19 September 2023, the Permanent Mission of the Republic of Uzbekistan to the OSCE sent a request for the legal review of the Draft Information Code of the Republic of Uzbekistan (hereinafter "the Draft Code") to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") and the OSCE Representative on Freedom of the Media (hereinafter RFoM).
2. On 31 October 2023, ODIHR and RFoM responded to this request, confirming their readiness to prepare a joint legal opinion on the compliance of the Draft Code with international human rights standards and OSCE human dimension commitments. On 19 January 2024, ODIHR and RFoM received the English version of the Draft Code for review.
3. The Draft Code is a revised version of an earlier draft issued on 14 December 2022. It contains several provisions that are similar to those found in the Draft Law on Mass Media of the Republic of Uzbekistan, which ODIHR and RFoM reviewed jointly in November 2021.[1] The Draft Code aims to amend and codify eight existing laws on freedom of expression, access to information and the media.[2]
4. This Joint Opinion was prepared in response to the above request. ODIHR and RFoM conducted this assessment within their mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.

II. SCOPE OF THE JOINT OPINION

5. The scope of this Joint Opinion covers only the Draft Code submitted for review. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating freedom of expression, access to information and the media in Uzbekistan.
6. The Joint Opinion raises key issues and provides indications on areas of concern. In the interest of conciseness, it focuses more on provisions that require amendments or improvements rather than on the positive aspects of the Draft Code. The ensuing legal analysis is based on international and regional human rights standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Joint Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR and RFoM do not advocate for any specific country model; they rather focus on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. In this context, it should be noted that any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of

1 Joint Legal Analysis of the Draft Law on mass Media of the Republic of Uzbekistan, ODIHR and OSCE Representative on Freedom of the Media (RFoM), November 2021.
2 See Explanation Letter on the Law on Approval of the Information Code of the Republic of Uzbekistan, Republic of Uzbekistan, 14 December 2022.

the broader national institutional and legal framework, as well as country context and political culture.

7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[3] (CEDAW) and the 2004 OSCE Action Plan for the Promotion of Gender Equality[4] and commitments to mainstream gender into OSCE activities, programmes and projects, the Joint Opinion integrates, as appropriate, a gender and diversity perspective.

8. This Joint Opinion is based on an unofficial English translation of the Draft Code provided by the Permanent Mission of the Republic of Uzbekistan to the OSCE, which is annexed to this document. Errors from translation may result. Should the Joint Opinion be translated in another language, the English version shall prevail in case of discrepancies.

9. In view of the above, ODIHR and RFoM would like to stress that this Joint Opinion does not prevent ODIHR and RFoM from formulating additional written or oral recommendations or comments on respective subject matters in Uzbekistan in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

10. The right to freedom of expression and to receive and impart information is a fundamental right, as well as an enabler of other human rights and fundamental freedoms and a guardian of democratic values.[5] The full enjoyment of this right is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs - including marginalized and underrepresented segments of society - can voice their opinions and participate freely in public affairs. The right to freedom of expression, along with the existence of free, independent and pluralistic media, is also necessary for facilitating the effective participation of citizens in the conduct of public affairs and holding government accountable. While underlining the importance of protecting the right to free expression and access to information, it should also be balanced with the protection of individuals' reputation and legitimate public interests as stipulated by relevant international human rights treaties.

11. The right to freedom of expression and to receive and impart information is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR).[6] Article 19 of the ICCPR provides that *"everyone shall have the right to hold opinions without interference"* and that *"everyone shall have the right to freedom of expression; this*

3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations, General Assembly resolution 34/180, adopted on 18 December 1979. The Kyrgyz Republic acceded to the Convention on 10 February 1997.
4 See Action Plan for the Promotion of Gender Equality, OSCE Ministerial Council, Decision No. 14/04, 7 December 2004, para. 32.
5 See UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur and the African Commission Special Rapporteur on Freedom of Expression and Access to Information (hereinafter "International Mandate-Holders on Freedom of Expression"), Joint Declaration on Media Freedom and Democracy, 2 May 2023.
6 See the Universal Declaration of Human Rights (UDHR), United Nations, General Assembly resolution 217 A. adopted 10 December 1948, Article 19.

right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[7] Article 19 of the ICCPR establishes the principle of neutrality by noting that these rights can be exercised regardless of the medium used. In General Comment No. 34 on Article 19 of the ICCPR, the UN Human Rights Committee further elaborates that the scope of Article 19 of the ICCPR embraces even expression that *"may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20"*.[8]

12. Freedom of the media is derived from freedom of expression, since the media and journalists are regarded as important 'deliverers' of public interest information and facilitators of public debate. The UN Human Rights Committee has thus authoritatively noted the essential nature of the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives. It has likewise stressed how important it is for free press and other media to be able to comment on public issues without censorship or restraint and inform public opinion. The public also has a corresponding right to receive media output.[9]

13. The right to freedom of expression is not absolute and can be limited under specific circumstances. Restrictions on the right to freedom of expression must, however, be compatible with the strict requirements set out in Article 19(3) of the ICCPR. Notably, they must be provided by law (test of legality), pursue one of the legitimate aims listed exhaustively in the text of Article 19(3)[10] (test of legitimacy), be necessary and proportionate, and constitute the least intrusive measure among those effective enough to reach the designated objective (test of necessity and proportionality). In addition, pursuant to Article 26 of the ICCPR, restrictions shall not be discriminatory. The requirement that restrictions to freedom of expression need to be provided by law means not only that restrictions need to be based on a law, but such law must also be precise, certain and foreseeable. Laws need to be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.[11] Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific aim(s) they are pursuing.

14. While Uzbekistan is not a Member State of the Council of Europe (CoE), Article 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR),[12] the case law of the European Court of Human Rights in the field of freedom of expression and freedom of the media, and other CoE instruments, as well as related documents

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7 International Covenant on Civil and Political Rights (ICCPR), United Nations, General Assembly resolution 2200A (XXI),adopted 16 December 1966, Article 19. The Republic of Uzbekistan acceded to the Convention on 28 September 1995.

8 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 11.

9 *Ibid.* para. 13.

10 i.e., (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.

11 See the General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 25, which states: "*a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.*" See also, e.g. Guidelines on Democratic Lawmaking for Better Laws, ODIHR, 16 January 2024, para. 12 and Principle 16; and Rule of Law Checklist, Venice Commission, CDL-AD(2016)007, 18 March 2016, para. 58. In addition, see, as an example of good regional practice, European Court of Human Rights, *The Sunday Times v. the United Kingdom (No. 1),* no. 6538/74, 26 April 1979, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct, by being able to foresee what is reasonable and what type of consequences an action may cause*."

12 See European Convention on Human Rights (ECHR), Council of Europe, entered into force on 3 September 1953, Article 10.

such as opinions of the European Commission for Democracy through Law of the CoE (Venice Commission) may nevertheless be relevant, persuasive and useful from a comparative perspective.[13] In particular, for the purposes of media regulation, a number of CoE Recommendations are highly relevant, especially the Recommendation on a New Notion of Media[14] and Recommendation on Principles for Media and Communication Governance.[15]

15. At the OSCE level, there are a number of commitments in the area of freedom of expression, access to information and freedom of the media. In particular, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 (1990 Copenhagen Document) proclaims the right to everyone to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Restrictions to the exercise of this right are only possible if they are prescribed by law and consistent with international standards.[16] OSCE participating States also reaffirmed *"the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinion"* in paragraph 26 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991 Moscow Document).[17] Moreover, in 1994 in Budapest, OSCE participating States reaffirmed that "*freedom of expression is a fundamental human right and a basic component of a democratic society*" committing to *"take as their guiding principle that they will safeguard this right"* and emphasizing in this respect, that *"independent and pluralistic media are essential to a free and open society and accountable systems of government*".[18]

16. In its Decision 3/18, adopted on 7 December 2018, the OSCE Ministerial Council called upon OSCE participating States to fully implement all OSCE commitments and international obligations related to freedom of expression and media freedom and to make their laws, policies and practices pertaining to media freedom fully compliant with their international obligations. In particular, the decision noted that, where necessary, States should review, repeal or amend such laws, policies or practices "*so that they do not limit the ability of journalists to perform their work independently and without undue interference (…).*"[19]

17. The OSCE RFoM is specifically mandated to observe relevant media developments in all OSCE participating States and to advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media. The OSCE RFoM, together with the freedom of expression mandate-holders from the UN, the African Commission on Human and Peoples' Rights (African Union) and the Organization of American States (hereinafter the International Mandate-Holders on Freedom of Expression), have adopted a series of Joint Declarations, which offer practical guidance covering current universal challenges to freedom of expression and

13 See documents available at <https://www.coe.int/en/web/freedom-expression/media>.
14 See, as an example of good regional practice, CoE Recommendation CM/REC(2011)7, "Recommendation of the Committee of Ministers to member States on a new notion of media", Council of Europe, Committee of Ministers, adopted on 21 September 2011.
15 See, as an example of good regional practice, CoE Recommendation CM/REC(2022)11, "Recommendations of the Committee of Ministers to member States on principles for media and communication governance", Council of Europe, Committee of Ministers, adopted on 6 April 2022.
16 See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), CSCE/OSCE, 29 June 1990), para. 9.1.
17 See Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (Moscow Document), CSCE/OSCE, 3 October, 1991, para. 26.
18 See CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era (Budapest Document), CSCE/OSCE, 21 December 1994, Chapter VIII, para. 36.
19 See OSCE Ministerial Council Decision No 3/18, "Safety of Journalists", 12 December 2018, p. 3.

freedom of the media.[20] Importantly, the 2023 Declaration on Media Freedom and Democracy outlines the broader legal and practical framework necessary to ensure that media can perform their crucial watchdog function in a democratic society.[21] A number of reports and guidance documents published by the OSCE RFoM, including the Special report on legal harassment and abuse of the judicial system against the media (2021),[22] Safety of Journalists Guidebook (3rd ed., 2020),[23] Resource Guide on the Safety of Female Journalists Online (2020),[24] Guidelines for monitoring online violence against female journalists (2023),[25] and Policy Manual "Spotlight on Artificial Intelligence and Freedom of Expression" (2022)[26] are also of relevance for the present Joint Opinion.

2. BACKGROUND

18. The Draft Code was developed by the Agency of Information and Mass Communications under the Administration of the President of the Republic of Uzbekistan, as part of the implementation of the Development Strategy of the New Uzbekistan for 2022-2026. On 14 June 2022, the Agency of Information and Mass Communications presented a first version of the Draft Code during a multistakeholder meeting convening representatives from state institutions, civil society and the media. On 14 December 2022, the first Draft Code was posted online for public consultations with inputs to be received until 29 December 2022. In September 2023, the Agency of Information and Mass Communications issued a new version of the Draft Code. From the information made available to ODIHR and RFoM, there is no clear indication as to which extent public inputs have been taken into consideration and have been reflected in the revised draft.

19. Article 33 of the Constitution of the Republic of Uzbekistan guarantees to everyone "*freedom of thought, speech, and convictions*" and "*the right to seek, obtain, and disseminate any information*", while specifying the conditions for restriction.[27] Chapter XV of the Constitution specifically deals with the Mass Media and provides that the mass media "*shall be free and act in accordance with law*" and that the State "*shall guarantee the freedom of the media to act and to exercise the right to seek, receive, use and disseminate information*". Article 81(3) specifies that *"[t]he mass media shall be responsible for the reliability of the information they provide*". The Draft Code broadly states that it aims to regulate the implementation of the constitutional right to information in the country (Article 1). According to the Explanatory Letter on the Draft Code,[28] the Draft Code aims to amend and codify eight existing laws regulating freedom of expression, access to information and the media.[29] Specifically, these eight laws include: the Law on Mass Media; the Law on Principles and Guarantees of Freedom of

20 See Joint Declarations, UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur and the African Commission Special Rapporteur on Freedom of Expression and Access to Information (hereinafter "International Mandate-Holders on Freedom of Expression").
21 See Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2 May 2023.
22 See Special Report on Legal Harassment and Abuse of the Judicial System Against the Media, OSCE-RFoM, 23 November 2021.
23 See Safety of Journalists Guidebook, OSCE/RFoM, 3rd edition, 10 November 2020.
24 See Safety of Female Journalists Online Resource Guide, OSCE/RFoM, 30 October 2020.
25 See Guidelines for monitoring online violence against female journalists, OSCE/RFoM, 3 October 2023.
26 See Spotlight on Artificial Intelligence and Freedom of Expression: A Policy Manual, OSCE/RFoM, 20 January 2022.
27 Article 33(4) of the Constitution provides that: "*Restrictions on the right to seek, obtain, and disseminate information shall be allowed only in accordance with the law and only to the extent necessary to protect the constitutional order, public health, public morality, the rights and freedoms of others, to ensure public safety, and public order, as well as preventing the disclosure of state secrets or other legally protected secrets*".
28 See Explanation Letter on the Law on Approval of the Information Code of the Republic of Uzbekistan, Republic of Uzbekistan, 14 December 2022.
29 *Ibid*.

information; the Law on Guarantees and Freedom of Information; the Law on Protecting Children from Information Harmful to their Health; the Law on Openness of State Authorities and Management Bodies; the Law on Protection of Journalistic Activity; the Law on Disclosure; and the Law on Distribution of Legal Information and Provision of its Use.

3. SCOPE OF THE DRAFT CODE AND GENERAL CONCEPTS

20. The Draft Code has a very wide scope and ambitiously seeks to regulate various matters related to the search, receipt, research and transmission of information, as well as the use of information resources and systems, informatization and information security (Article 1). Based on the contents of the Draft Code, this includes topics ranging from security of information to different forms of information distribution (notably via online platforms, television and radio) and advertising. The Draft Code additionally includes different aspects of regulating so-called mass media (a relatively wide concept) and also addresses the rights and obligations of journalists. In that, it attempts to cover a broad range of topics usually addressed in separate legislation, notably on access to information, television and radio broadcasting, cyber security, data protection, managing media outlets and the roles of journalists.

21. Although the Explanation Letter specifies that the Draft Code aims to amend and codify eight existing laws, [30] the Draft Code does not include any provision defining the legal consequences of its adoption vis-à-vis these existing laws. It is not clear whether these laws will be repealed following the adoption of the Draft Code, or whether it will replace parts of these laws or simply complement them; this lack of clarity may lead to legal uncertainty. If the Draft Code is intended to be the primary legislation regulating information space, it should include clear provisions that either repeal other relevant laws or clarify that its provisions shall prevail where it contradicts other pieces of legislation.[31] By contrast, if the Draft Code is designed to complement existing laws, some provisions would perhaps fit better into the existing relevant laws.[32] **It is thus recommended to more clearly specify the purpose of the Draft Code, while clarifying the legal consequences of its adoption on relevant existing laws to ensure the coherence of the legal framework in this field.**

RECOMMENDATION A.

To more clearly specify the purpose of the Draft Code, while clarifying the legal consequences of its adoption on relevant existing laws to ensure the coherence of the legal framework in this field.

22. Overall, a number of the principles set out in the Draft Code are positive and go in the right direction, notably the right to free use of information for everyone (Article 8(1)), but also the protection of everyone in their right to search for, receive, examine,

30 *Ibid.*.
31 See Guidelines on Democratic Lawmaking for Better Laws, OSCE/ODIHR, 2023, Principle 15, which underlines the importance of the clarity and intelligibility of legislation as a key principle, underlying that "*no inconsistencies or conflicts should exist within a law*".
32 For example, sections of the Draft Code addressing key principles of the right to access information (in Chapter 2), state policy and management in the field of information (in Chapter 4), as well as procedures for ensuring transparency of state bodies and organizations and different forms of transmitting information to the public (in Chapters 5 – 8) would perhaps fit better into the existing Law of the Republic of Uzbekistan n.439-II on Principles and Guarantees of Freedom of Information, 12 December 2002.

distribute, use and store information without discrimination (Article 10(1)). Article 4(2), stating that if an international treaty stipulates rules that differ from those of national Uzbek legislation on information, the international rules apply, is also welcome. Article 69 declares mass media to be free and states that everyone has the right to speak out in mass media and openly express their opinions and beliefs, while Article 71 prohibits monopolization of the mass media market. Importantly, Article 73 prohibits censorship of mass media outlets. These provisions are all relevant for the protection of human rights in this field.

23. However, although the Draft Code declares its adherence to freedom of expression standards, there are a number of concepts and provisions that raise serious concerns, as further discussed in more detail below.

3.1. The Concepts of Free and Restricted Information

24. Article 2 of the Draft Code states that the use of certain documented information is restricted by law (confidential information), while so-called "secret information" is not disclosed to others in the interests of individuals, society and the State. According to Article 5(2), the right to search for, receive and distribute information can only be limited in accordance with the law, and only to the extent necessary to protect the constitutional order, public health, social morality, the rights and freedom of others, ensure public safety and order or prevent the disclosure of state and other secrets protected by law. This mirrors the wording of Article 33 (4) of the Constitution. In case of state or other legally protected secrets, access to secret or confidential information may be refused (Article 13). The obligation for information to be open and transparent under Article 7 also does not apply to secret and confidential information.

25. The above-mentioned bases for restricting access to information coincide, to a degree, with the limitation grounds for the right to freedom of expression, including the right to information, provided under Article 19 (3) of the ICCPR. This provision states that the exercise of this right may be limited where this is provided by law and necessary out of respect of the rights or reputations of others or for the protection of national security or of public order (ordre public), or of public health or morals. It should be noted that the protection of the constitutional order *per se* and prevention of the disclosure of state or other secrets are not listed as protected interests under Article 19 (3) of the ICCPR. In this regard, the UN Human Rights Committee has clearly stated that restrictions of the right to freedom of expression are not permitted if they are based on grounds not specified in this provision.[33] Additionally, the UN Human Rights Committee has warned against restricting freedom of expression in the interests of protecting morals, and has noted that limitations based on this ground need to be "*understood in the light of universality of human rights and the principle of non-discrimination"*.[34]

26. Overall, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has clarified that exceptions to the right to access information need to be justified on a case-by-case basis, and shall only apply where "*there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information*".[35] The

33 See the General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 22.
34 *Ibid.* para. 32.
35 Report on the promotion and protection of the right to freedom of opinion and expression, United Nations, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/68/362, 4 September 2013, paras. 76 (d) and 99.

Special Rapporteur also noted that such exceptions should be determined by an independent body, preferably a court, and not by the body holding the information.[36]

27. The reference to "other legally protected secrets" beyond "state secrets" is problematic and may cover multiple and unknown kinds of other classified information. In principle, information held by public authorities should be based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.[37] As noted in previous opinions, to avoid over-classification, secrecy laws should define national security precisely and include narrowly and clearly defined prohibited disclosures, which are necessary and proportionate to protect national security.[38] They should indicate clearly the criteria, which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label "secret" for purposes of preventing disclosure of information which is in the public interest.[39] Moreover, disclosure should not be limited in the absence of the Government's showing of "*a real and identifiable risk of significant harm to a legitimate national security interest*"[40] that outweighs the public's interest in the information to be disclosed.[41] If a disclosure does not harm a legitimate state interest, there is no basis for its suppression or withholding.[42] Furthermore, clear and transparent procedures should be put in place to avoid over-classification of documents, unreasonably long time-frames before de-classification and undue limitations in accessing historical archives.[43] The classification of documents as secret need to be revisited on a regular basis, as information that was initially considered highly confidential may no longer fall under this category some years later.[44]

28. Thus, while acknowledging that the refusal to provide information based on either its classification as secret or confidential is specifically mentioned in Article 33 of the Constitution, **such an exclusion from the principle of disclosure, which is outlined in para 27 of this opinion, should be reconsidered. Instead, it would be advisable to create a system whereby public information is *a priori* accessible to the public, unless there are serious and weighty reasons for non-disclosure** (in particular, where such information threatens to cause substantial harm, and such threat outweighs the public interest in information disclosure).[45]

29. Additionally, the Draft Code needs to allow for an appeal process in case a request for access to information is rejected, to examine whether such rejection was justified based

36 *Ibid*, para. 99.
37 See Joint Declaration, by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, adopted 6 December 2004, page 2, which provides that: "*The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a* presumption that all information is accessible subject only to a narrow system of exceptions."
38 See, Interim Joint Opinion on the Draft Law of the Kyrgyz Republic on the Mass Media (as of 13 May 2023), OSCE/ODIHR-OSCE/RFoM 26 July 2023, para. 79; see also Guidelines on the Protection of Human Rights Defenders , OSCE/ODIHR, 2014, para. 144.
39 See e.,g., International Mandate-Holders on Freedom of Expression, 2004 Joint Declaration (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.
40 See e.g., Report on the Protection of Sources and Whistleblowers, United Nations Special Rapporteur on Freedom of Opinion and Expression, A/70/361, 2017, para. 47; and the Global Principles on National Security and the Right to Information (The Tshwane Principles), developed and adopted on 12 June 2013 by a large assembly of experts from international organisations, civil society, academia and national security practitioners, Principle 3(b).
41 See e.g., Report on the Protection of Sources and Whistleblowers, United Nations, Special Rapporteur on Freedom of Opinion and Expression, A/70/361, 2017, para. 10.
42 See the General Comment No. 34 on Article 19 of the ICCPR, United Nations, Human Rights Committee, CCPR/C/GC/34, para. 30.
43 Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR, 2014, para. 146.
44 See Opinion on the Draft Law on Free Access to Public Information in the Republic of North Macedonia, OSCE/ODIHR, 15 July 2019, para. 44. See also Opinion on the draft Law on Access to Information of the Republic of Kazakhstan and related Amendments to other Legislative Acts, OSCE/ODIHR, 25 May 2015; and Opinion on the Draft Law of the Republic of Kazakhstan on Access to Public Information, ODIHR, 16 November 2010.
45 See Opinion on the draft Law on Access to Information of the Republic of Kazakhstan and related Amendments to other Legislative Acts, OSCE/ODIHR, 25 May 2015, para. 19.

on the above grounds. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has clarified that "*the law should provide for an individual right of appeal to an independent administrative body in respect of a refusal by a public body to disclose information*".[46] After all, as per the international standards elaborated above, even if the disclosure of certain information would pose a risk of harm to a protected interest, the information should still be disclosed where the benefits of disclosure (e.g., exposing human rights abuses or combating corruption) outweigh the harm. **It is thus recommended to revisit the Draft Code to allow for an appeal before an independent body and/or a court in cases of refusal by a public body to disclose information on any ground, including when the information is classified as secret.**

RECOMMENDATION B.

To ensure that classification of information as secret or confidential is strictly limited to cases where there are serious and weighty reasons for non-disclosure to protect legitimate goals as stipulated in Article 19 (3) of the ICCPR, where such information threatens to cause substantial harm, and such threat outweighs the public interest in information disclosure, while ensuring that the refusal to disclose public information can be appealed before an independent body and/or a court.

3.2. Ensuring the Accuracy of Information

30. Numerous provisions of the Draft Code address the need to ensure the veracity of information and also to oblige different actors to ensure that information that they use and distribute is accurate and truthful.[47] It is noted that Article 81 (3) of the Constitution provides that *"[t]he mass media shall be responsible for the reliability of the information they provide*".

31. As stated recently in a 2022 Report of the UN Secretary-General to the General Assembly on countering disinformation for the promotion and protection of human rights and fundamental freedoms, state responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression.[48] Indeed, as also stressed in this Report, not all inaccurate information is harmful, and only some harms – such as those that in fact implicate public health, electoral processes or national security – may warrant state intervention.[49] Also, while domestic laws addressing the propagation of falsehoods are permissible in relation to matters such as fraud, perjury, false advertising and defamation, the general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events is not permitted, as specified by the UN Human Rights Committee in General Comment No. 34.[50] . Similarly, the International Mandate-Holders on Freedom of Expression stated with

46 Report on the promotion and protection of the right to freedom of opinion and expression, United Nations, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/68/362, 4 September 2013, para. 76 (e).

47 Article 9 of the Draft Code states that information must be accurate and truthful and prohibits distortion or falsification of information; according to Article 69, mass media are responsible for "the bias and unreliability" of information disseminated; Article 76 elaborates and expands this notion by stipulating that mass media, journalists and bloggers are legally responsible for the accuracy of the news and materials that they prepare and disseminate; Article 106 likewise states that journalists must verify the accuracy of the materials they prepare and must provide impartial information; Article 128 (14) states that owners of mass media, websites or other online resources, including bloggers, are responsible for verifying the accuracy of any publicly accessible information before publication on their website, webpage or other information resource.

48 See Report on Countering disinformation for the promotion and protection of human rights and fundamental freedoms, United Nations, Secretary General, A/77/287, 12 August 2022, para. 10.

49 *Ibid*, para. 42.

50 *Op. cit.*, footnote 8, para. 49.

regard to the issue of disinformation and "fake news" that: "*general prohibitions on the dissemination of information based on vague and ambiguous ideas, including "fake news" or "non-objective information" are incompatible with international standards for restrictions on freedom of expression […]and should be abolished*".[51]

32. The right to freedom of expression may only be restricted in accordance with the strict requirements set out in Article 19(3) of the ICCPR (see para. 13 above). Given the importance of this right, especially insofar as it pertains to the media and the distribution of information, placing a similar burden on all types of media, including mass media, journalists, and bloggers, irrespective of their size, outreach and capacity, to disseminate only accurate or true information risks violating their human rights and producing a chilling effect on media freedom. It is reasonable to expect from media and journalists to act responsibly and verify the accuracy of facts and to carry out adequate or sufficient research for that purpose with a view to provide "reliable and precise" information in accordance with the ethics of journalism.[52] At the same time, imposition of a general obligation for all media to only publish accurate/truthful information would be disproportionate and may be abused in practice. It is important to reiterate that **no one should bear strict liability for inaccurate statements of fact that are published or disseminated when one has acted reasonably and in good faith when verifying the accuracy of information and disseminating such information**.[53] **Further, a graduated and differentiated approach towards the legal obligations applicable in terms of checking facts and the accuracy of information should be envisaged, depending on the type of media and their level of professional capacity and outreach**. This is in addition to the adoption of self-regulatory rules on verifying accuracy of information that is published.

33. Certain states have adopted alternative means of countering disinformation by focusing on enhancing transparency of online platforms, promoting robust public information campaigns and wide-ranging access to information, protecting free and independent media and dialogue with communities and building digital, media and information literacy.[54] Some states also require, through legislation, that audio-visual outlets using terrestrial broadcasting establish an independent committee tasked with assisting them to ensure the honesty of the information they disseminate.[55] The principle of honesty of information, distinct from a requirement of truthfulness or accuracy of all published information, necessitates, among others, that outlets verify the sources of information,

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51 See Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, International Mandate-Holders on Freedom of Expression, 3 March 2017, para. 2 (a).

52 See e.g., as a comparison, European Court of Human Rights, *Pedersen and Baadsgaard v. Denmark* [GC], 17 December 2004, paras. 72 and 82; *Kasabova v. Bulgaria*, 19 April 2011, paras. 61 and 63-68; and *Sellami v. France*, 17 December 2020, paras. 52-54.

53 See e.g., Urgent Comments on the Draft Criminal Offences against Honour and Reputation in the Republika Srpska, OSCE/ODIHR, 11 May 2023, para. 37. See also, as a matter of comparison, the judgments of the European Court of Human Rights underlining that "*the safeguard afforded by Article 10 [of the ECHR] to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism*", see Axel Springer AG v. Germany [GC], 7 February 2012, para. 93; *Bladet Tromsø and Stensaas v. Norway* [GC], 20 May 1999, para. 65; *Fressoz and Roire v. France* [GC], 21 January 1999, para. 54; *Stoll v. Switzerland* [GC], 10 December 2007, para. 103; *Sellami v. France*, 17 December 2020, paras. 52-54; for an indication by the European Court of Human Rights that the same principle must apply to others who engage in public debate, see *Steel and Morris v. the United Kingdom*, 15 February 2005, para. 90.

54 Report on Countering disinformation for the promotion and protection of human rights and fundamental freedoms, United Nations, Secretary General, A/77/287, 12 August 2022, see para. 24 and following for further information and state examples. See also Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, International Mandate-Holders on Freedom of Expression, , 3 March 2017, para. 3.

55 See for example Loi n° 2016-1524 du 14 novembre 2016 visant à renforcer la liberté, l'indépendance et le pluralisme des médias, Republic of France, 14 November 2016, Articles 6 and 11.

present uncertain information in the conditional tense, and offer different perspectives when presenting contentious information.

34. **It is thus recommended to review the above provisions regarding the prevention of and liability for disseminating false information, and to seek to address the problem of disinformation in a manner that will not impinge on freedom of expression and freedom of the media.**

> **RECOMMENDATION C.**
>
> To reconsider the provisions of the Draft Code regarding the prevention of and liability for disseminating false or inaccurate information, ensuring that no one bears strict liability for inaccurate statements of fact that are published or disseminated when one has acted reasonably and in good faith when verifying the accuracy of information and disseminating such information, while providing for a graduated and differentiated approach towards the legal obligations applicable in terms of checking facts and the accuracy of information, depending on the type of media and their level of professional capacity and outreach.

3.3. Definitions Related to Mass Media

35. The stated aim of the Draft Code, as set out in Article 1, is to regulate the relations arising out of the implementation of the constitutional right to information. Thus, Chapters 6 to 12 regulate different aspects of mass media. The definition of mass media as set out in Article 2 of the Draft Code is quite broad and refers to any "periodic distribution of mass information with a permanent name", published either in print, electronically, by broadcast, or as another form, and registered in a prescribed manner. Mass information is described in the same provision as documented information, including print, audio, audiovisual and other news and materials intended for an unlimited audience.

36. Overall, these definitions are broad and do not sufficiently narrow down the types of outlets falling under the legal regime of mass media. The above definition of mass media would cover not only mass media outlets such as print or broadcasters, but also many other actors, including non-profit organizations or private individuals, disseminating information via social media on a regular basis using a permanent name. Submitting private individuals or these types of organizations to the same legal regime as mass media outlets could unduly limit the rights of these actors to freedom of expression.

37. On the other hand, explicitly limiting the scope of the Draft Code to *professional*, institutionalized mass media outlets[56] would help install better safeguards for Internet users' freedom of expression and ensure that the Draft Code does not impose undue restrictions and burdens, in line with the general principle that fundamental rights apply equally offline and online. **It is thus recommended to specify that the Draft Code aims to only regulate professional, institutionalized mass media outlets, by excluding from its scope and from the definition of mass media the likes of non-**

56 See as an example of good regional practice, Council of Europe Committee of Ministers, 'Recommendation CM/Rec(2011)7 on a new notion of media', adopted on 21 September 2011, which explains criteria – intent to act as media, purpose, editorial processes controlling the content that is published, adherence to professional standards, outreach and recognition – for identifying and distinguishing media from other forms of communication.

professional publications, personal blogs and personal social media pages or accounts.

38. Additionally, it may also be helpful to identify and distinguish between different categories of mass media outlets based on their size, outreach and capacity, to develop a regulatory framework with different levels of duties and responsibilities that are proportionate to such size, outreach and capacity (see below para. 78).

39. The definitions of bloggers and periodical print publication provided in Article 2(13) and (16) of the Draft Code are equally vague and general. **They should likewise be revisited in a similar manner so that they do not cover individuals or publications that are not performing journalistic function.**

40. **Additionally, the element of obligatory registration in the definition of mass media should be revisited (see Sub-Section 5.2).** On the one hand, Article 2 specifies that periodic distributions of mass information with a permanent name are defined as mass media if they are also registered, while at the same time Article 80 indicates that certain mass media outlets are not required to be registered. **This aspect of the definition of mass media should thus be clarified, to avoid contradicting regulatory provisions.**

RECOMMENDATION D.

To more narrowly define key terms such as that of mass media and ensure that the Draft Code only regulates *professional*, institutionalized mass media outlets, by excluding from its scope the likes of non-professional publications, personal blogs and personal social media pages or accounts.

4. REGULATION OF INFORMATION FLOWS, SYSTEMS AND RESOURCES

41. The Draft Code aims to regulate different means of providing information to the population, both in terms of the State proactively disclosing certain information, and in terms of providing information upon request (though, as noted above, the latter topic is mostly covered in other legislation setting out procedures for accessing publicly held information). The Second Section of the Draft Code deals with information systems and information resources, which include provisions on state policy and management in the field of information, as well as on procedures to ensure the transparency of activities of state bodies and organizations. Section 3 deals with the different forms of distributing information on online platforms, television and radio broadcasters, television and radio, and on mass media respectively. Section 3 likewise covers the activities of journalists and regulates advertising on online platforms.

42. Chapter 2 of the Draft Code contains general provisions on the right to freedom of information. Thus, Article 5 outlines the freedom to access information, which it describes as the right to freely search for, receive, examine, distribute, use and store information without hindrance. It is assumed that the right to request access to information is also covered by this provision, especially as Article 11 specifically details the procedure whereby individuals and legal persons may apply for accessing information.

43. Article 10 contains guarantees of the freedom to access information, which include a non-discriminatory clause in paragraph 1, stating that the right to access information shall not be restricted based on people's "*gender, race, nationality, language, religion,*

social origin, beliefs, personal and social status". While this type of guarantee is welcome in principle, it omits certain protected characteristics that have been recognized in international human rights law. Notably, Article 2 of the ICCPR obliges States Parties to the Covenant to respect and ensure the rights contained therein without distinction of certain characteristics mentioned in Article 10, but also refers to others such as colour, political or other opinion, property, birth or other status. The general prohibition of discrimination also protects against discrimination based on other characteristics, such as sexual orientation and gender identity, as outlined in various UN resolutions and documents.[57]

44. It is noted in this context that in 2020, the UN Human Rights Committee recommended that the Republic of Uzbekistan adopt comprehensive anti-discrimination legislation that prohibits discrimination based on all grounds mentioned under the ICCPR, including colour, political or other opinion, national origin, property, birth, sexual orientation and gender identity or other status.[58] In the absence of such legislation, it is all the more important that other existing or planned laws contain bans on discrimination based on all grounds protected in accordance with the ICCPR. **Article 10 of the Draft Code should thus be adapted accordingly, so that it protects access to information for everyone equally, and does not discriminate on the basis of colour, opinions, birth, sexual orientation or gender identity, and other status**.

45. Articles 10(2) and 12(1) of the Draft Code list the duty bearers of the obligation to provide access to information, which beyond state authorities and officials, also include "public associations", and "other non-governmental non-profit organizations". Article 12(1) in addition refers to enterprises as information-holders. According to international human rights law, the duty bearer of such an obligation is the state and its sub-components, not private organizations. Notably, the right to freedom of association also involves the right to associational privacy and legislation should contain safeguards to ensure the respect of the right to privacy of clients, members and founders of associations, as well as provide redress for any violation in this respect.[59] Private bodies should only be considered information holders within the meaning of the Draft Code if they carry out statutory or public functions, hold information necessary to protect or exercise a right, or if they are recipients of public funding.[60] Otherwise, associations or other private legal persons should not be subject to the same obligations as public authorities with respect to the provision of access to information, although they should comply with the legislation on personal data protection. **It is thus recommended to remove from Articles 10 and 12 the references to associations and enterprises as potential duty bearers of the obligation to provide access to information, unless they carry out statutory or public functions, receive public funding or are in possession of public information.**

46. Although the Draft Code does not go into access to information procedures in detail, Article 11 does provide some general principles in relation to such procedures. While

57 See, e.g., Resolution on protection against violence and discrimination based on sexual orientation and gender equality, United Nations, Human Rights Council A/HRC/RES/32/2 of 15 July 2016. See also, Report on discrimination and violence against individuals based on their sexual orientation and gender identity, the promotion and protection of the right to freedom of opinion and expression, United Nations, High Commissioner for Human Rights A/HRC/29/23, 4 May 2015, para. 18, which specifically noted the obligations of states to protect the rights of freedom of thought and expression without discrimination on the grounds of sexual orientation or gender identity.

58 See Concluding Observations on the Fifth Periodic Report of Uzbekistan, United Nations, Human Rights Committee, 1 May 2020, para. 9

59 See, Joint Guidelines on Freedom of Association (2015), OSCE/ODIHR-Venice Commission, , 2015 para. 231.

60 Opinion on the draft Law on Access to Information of the Republic of Kazakhstan and related Amendments to other Legislative Acts, OSCE/ODIHR, 25 May 2015, para. 37.

paragraph 2 of this provision is positive in that it states that information shall be provided free of charge in response to such requests, it limits the type of information that individuals and legal persons have the right to ask for to information that is "*relevant to the applicant's rights and lawful interests*". Such limitation would appear unduly restrictive and **should be reconsidered since this could prevent requesting information of legitimate *public interest* that should fall within the scope of the right to seek, receive and impart information under Article 19 of the ICCPR**.[61]

47. Article 11(3) further states that fees may be charged for "other information". It is unclear how the information holders will determine which information is relevant to applicants' rights and interests, and which information falls under "other information", the provision of which will then need to be paid for. It is possible that this distinction is made clearer in other legislation regulating access to information, in which case relevant cross-reference should be made. If such distinction is retained, a wide interpretation of information relevant to "applicants' rights and interests" should be ensured. In addition, fees for requests for other information should not be such as to constitute an unreasonable impediment to access to information.[62]

48. Chapter 5 describes procedures for ensuring transparency in the activities of state bodies and organizations. According to Article 32, this is achieved via information services, in other words structural units or designated individuals present in all state bodies and organizations. Information services are responsible for providing the public with "*prompt, comprehensive and timely information about the activities of state bodies and organisations through mass media, official websites, and other information resources, and organising information events*". At the same time, however, these services also have a public relations-type role, as they are also meant to form and promote a positive image of state bodies and organizations, conduct social surveys and study public opinion. Additionally, such services are also tasked to respond promptly to "*critical and widely discussed information attacks*" (Article 32(9)).[63] While promoting the public authority and its work is legitimate, it would be preferable if this would not be the same service responsible for providing public information to individuals. **Consideration should thus be given to separating these tasks and giving them to separate units within a public authority or organization, so that one will be responsible for providing public information to citizens, even if this exposes potential weaknesses of authorities, and one will be responsible for promoting the authority or organization.**

RECOMMENDATION E.1

To supplement Article 10 so that it protects access to information for everyone equally, including persons of different colour, opinions, birth, all types of sexual orientation or gender identity, and other status.

RECOMMENTATION E.2

To remove from Articles 10 and 12 the references to associations and enterprises as potential duty bearers of the obligation to provide access to information, unless they

61 See the General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 30

62 *Ibid.* para. 19.

63 Article 123 (6) specifies that such attacks would refer to attacks "*aimed at disrupting national self-awareness, distancing society from historical and national traditions and customs, destabilizing the socio-political situation, and undermining interethnic and interfaith harmony*".

carry out statutory or public functions, receive public funding or are in possession of public information.

RECOMMENTATION E.3

To separate the tasks of promoting the public authority and its work and providing public information to individuals, and allocate them to distinct units within a public authority or organization.

5. REGULATING MASS MEDIA

49. The Draft Code contains numerous provisions relating to the mass media, most of which can be found in Chapters 9-12. While Chapter 9 regulates the activities of mass media, Chapter 10 covers principles of the organization, suspension and termination of mass media entities. Chapter 11 is about mass media products and Chapter 12 about the relations between mass media and state bodies, organizations and citizens. As stated at the beginning of this Joint Opinion, it is not clear how the Draft Code, once adopted, is meant to interact with legislation on mass media, and whether adoption of the provisions contained in the Draft Code will lead to significant changes in the more specialized mass media legislation or whether these laws will stop to apply.

50. The concept of mass media in Uzbekistan relates to all mass media, from the print and broadcast sectors to online outlets. The Draft Code imposes the same legal regime, and thus the same level of duties and responsibilities on all mass media. As underlined by the UN Human Rights Committee, regulatory systems should take into account the differences between the print and broadcast sectors and the Internet, while also noting the manner in which various media converge.[64] As already noted by ODIHR and RFOM in their 2021 Joint Opinion on the draft mass media legislation of Uzbekistan, it is recommended that different sectors of the media market be subject to differentiated levels of regulation, ranging from broadcasting as the most regulated field given the scarce infrastructure technologies to print media, which habitually enjoys minimum state interference and usually forms self-regulatory bodies to deal with possible disputes.[65] Consequently, **the Draft Code should adopt a graduated and differentiated approach towards media regulation overall and should distinguish between the print, broadcast and the Internet media whereas minimal necessary regulation would apply to print and online media outlets and more stringent regulation would be justifiable in the field of broadcasting** (see also Sub-Section 5.2 below).[66] As noted in 2023 Joint Declaration on Media Freedom and Democracy: states should undertake a differentiated and graduated approach to media regulation based on the principles of strict necessity and minimum intervention needed to achieve the legitimate interest of such regulation.[67] This would require amendments to numerous provisions of the Draft Code.

64 See the General Comment No. 34 on Article 19 Freedoms of Opinion and Expression of the ICCPR, United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 39.

65 See *ibid*. para. 39; and Joint Legal Analysis of the Draft Law on Mass media of the Republic of Uzbekistan, OSCE/ODIHR-OSCE/RFoM, November 2021, Chapter 1.

66 As noted in the 2023 Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2 May 2023, page 6, para. (b), states should undertake a differentiated and graduated approach to media regulation based on the principles of strict necessity and minimum intervention needed to achieve the legitimate interest of such regulation.

67 Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, Joint Declaration on Media Freedom and Democracy, 2 May 2023, page 6, para. (b).

51. Article 77 deals with another matter, namely the right to establish a mass media entity. This provision states that individuals who have been declared legally incapacitated may not found such entities. Though going beyond the analysis of the Draft Code, it is noted that concerns have been raised regarding the system of legal incapacitation in the Republic of Uzbekistan, notably that existing legislation promotes removal of legal capacity and substituted decision-making, and lacks concepts of reasonable accommodation for persons with disabilities.[68] Pursuant to Article 12 of the CRPD, all persons with disabilities shall enjoy legal capacity and States should seek to assist them to exercise their legal capacity, by providing them with access to different types of supported decision-making arrangements, rather than pursue a system of legal incapacitation and exclusion.[69] In light of the foregoing, and though falling beyond the scope of this Joint Opinion, the system of legal incapacitation in the Republic of Uzbekistan should be reviewed and reconsidered as such.

52. Article 77 prohibits legal entities with foreign investment shares comprising 30% or more of their charter capital from founding mass media entities. Limitations on foreign ownership of mass media outlets exists in certain OSCE participating States, but usually only in relation to broadcasting mass media.[70] **Applying such rules to all mass media may be quite restrictive and it is recommended to re-assess the restrictions concerning media ownership and narrow the scope of the restriction for foreign ownership to what is considered justified and proportionate**.

53. The products of mass media outlets, including details of their distribution and publication, are outlined in Chapter 11 of the Draft Code. While Article 84 describes the distribution processes of mass media outlets, Article 85 goes into the information on the mass media outlet that must be published along with each publication. Article 86 provides details on electronic forms of periodic print publications and specifies that the former may only be published if its contents are identical with the latter; where this is not the case, the electronic version of a print publication needs to be registered as an independent mass media outlet.

54. This requirement appears to be unnecessarily restrictive and would seriously constrain the ability of newspapers to make full use of their electronic versions. Generally, electronic newspaper formats follow different practices than their printed counterparts and should be free to add different contents that work better in an online format than in print publications. Limiting mass media outlets in this editorial freedom would not appear to be necessary nor proportionate under international law and would in practice mean that many print media outlets, in particular smaller ones, might regard having both print and online versions of their media products as too burdensome. **It is recommended to reconsider limiting the use of electronic forms of print publications in this way, and to amend this part of Article 86 accordingly, or delete it entirely.**

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68 See the Situation Analysis on the Rights of Persons with Disabilities in Uzbekistan, UNICEF, UNHCR, UNDP and UN Office of the High Commissioner for Human Rights, September 2021, pages 19, 21 and 67.

69 See Joint legal analysis of the draft law on mass media of the Republic of Uzbekistan, OSCE/ODIHR-OSCE/ RFoM, November 2021, p. 23.

70 Legislation on foreign media ownership in EU member states, shows that 23 EU member States (except Austria, Cyprus, France, Poland, and Spain) do not impose any limit on foreign media ownership; even where there is some kind of restriction, it does not apply to citizens or companies from EU countries. For example, in **France,** non-EU/EEA companies/citizens cannot directly or indirectly hold more than 20% of the capital share or voting rights of a TV/radio channel broadcast in French on digital terrestrial networks; **Poland** sets no restriction for newspapers and a maximum 49% limit of non-EU ownership in the broadcasting sector; see e.g., Resource Centre on Media Freedom in Europe, <https://www.rcmediafreedom.eu/Multimedia/Infographics/Foreign-media-ownership-in-Europe>; see also as a reference, Media pluralism in the Member States of the European Union, European Commission, SEC(2007) 32, Commission Staff Working Document.

RECOMMENDATION F.1

To re-assess the restrictions concerning media ownership and to consider narrowing the scope of the restriction for foreign ownership to what is considered justified and proportionate.

RECOMMENDATION F.2

To reconsider entirely the content restrictions imposed for the online formats of print publications included in Article 86.

5.1 Restrictions of Certain Types of Information or Speech

55. The list of legitimate aims that justify restrictions on freedom of expression provided in Article 19(3) of the ICCPR is exhaustive. Freedom of expression can only be restricted if this is necessary for respect of the rights or reputations of others, for the protection of national security, public order, or of public health or morals. The Draft Code provides for an extensive range of content restrictions, some of which do not meet the requirements of Article 19(3) ICCPR and are highly problematic from a freedom of expression point of view.

5.1.1. Restrictions in Relation to Legal Proceedings

56. Article 70(3) prohibits not only the publication of investigation or preliminary investigative materials without the consent of prosecutors, investigators or inquirers, but also prohibits mass media from "speculating on the outcome of a case" before a court decision is issued or before a decision enters into effect, or from otherwise influencing the court.

57. While it may be legitimate to prohibit the publication of certain documents linked to an ongoing investigation, mere speculation on the outcome of a case does not appear to constitute an interference with an ongoing case and should in principle be permitted. Moreover, due to the rather broad wording and possible varying understandings of what could potentially amount to "speculation", this prohibition could be misused to prevent any media coverage of judicial proceeding, thus, unduly limiting access to the information of public interest. Hence, this provision appears as excessively restrictive and risks impinging reporters' right to report on the administration of justice, as well as the principle of fair and public hearings, as protected in Article 14 of the ICCPR. As underlined by the International Mandate-Holders on Freedom of Expression "*no restrictions on reporting on ongoing legal proceedings may be justified unless there is a substantial risk of serious prejudice to the fairness of those proceedings and the threat to the right to a fair trial or to the presumption of innocence outweighs the harm to freedom of expression*".[71] **It is recommended to amend Article 70 accordingly.**

5.1.2. Restrictions Based on Language

58. As part of other provisions on the dissemination of mass media products, Article 90 regulates the use of the state language and of other languages in mass media. This provision states that mass media may be published in all official languages of Uzbekistan and prohibits the use of "*rude and obscene words and expressions,*

71 Joint Declaration, International Mechanisms for promoting Freedom of Expression, International Mandate-Holders on Freedom of Expression, 2002.

including insults" in mass media. Moreover, mass media must adhere to the "scientific rules and norms of the language in which they are published".

59. The right to freedom of expression is very broad and protects all forms of ideas, information or opinions, including those that "offend, shock or disturb" the state or any part of the population.[72] Indeed, the UN Human Rights Committee has stressed that Article 19(2) embraces even expression that may be regarded as deeply offensive.[73] To protect minors, there are also less restrictive measures that could be envisaged, such as the requirement that certain content be broadcasted only at certain times (after 11 pm, for instance) or the requirement to add clear marking and warnings prior to broadcasting certain content. Given the importance of freedom of expression, especially in relation to the media, **it is recommended to remove this prohibition from the Draft Code and to instead consider introducing the above-mentioned less restrictive measures, while ensuring that any prohibitions included in the Draft Code are limited to those expressions prohibited in accordance with international human rights law,[74] notably with respect to calls to violence, "*any propaganda for war*" and "*[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*" as per Article 20 (1) and (2) of the ICCPR, or the like.**

60. As far as the need to adhere to "scientific language rules and norms" is concerned, it is quite challenging to ascertain how this type of provision may be interpreted, operationalized, and implemented in practice. **The vagueness of this provision can potentially result in a wide array of consequences due to its broad meaning and potential varying implementation and it is thus recommended to delete it.**

5.1.3. Restrictions Based on the State's Information Security and Social Consciousness

61. Section 4 of the Draft Code concerns information security, which is about protecting the interests of the individual, society and state in the field of information (Article 2). This Section covers the protection of individuals, society and state from what is considered to be harmful content as well as the security of information resources and systems. In this context, it is important to note that protecting information systems

72 See Joint declaration on freedom of expression and "fake news", disinformation and propaganda, International Mandate-Holders on Freedom of Expression seventh, 2017, paragraph of the Preamble. See also 2015 Thematic Report, UN Special Rapporteur on counter-terrorism A/HRC/31/65, 22 February 2016, para. 38. See also, as an example of good regional practice, European Court of Human Rights, *Handyside v. United Kingdom*, no. 5493/72, 7 December 1976), para. 49; and *Bodrožić v. Serbia*, no. 32550/05, 23 June 2009, paras. 46 and 56.

73 See *Op. cit.*, footnote 7, para. 11.

74 These include: "*direct and public incitement to commit genocide*", which should be punishable as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide to which Uzbekistan acceded on 9 September 1999; the "*propaganda for war*" and the "*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*", which should be prohibited as per Article 20 (1) and (2) of the ICCPR (see also OSCE RFoM, Non-Paper on Propaganda and Freedom of the Media (2015), especially with reference to propaganda for war and hatred that leads to violence and discrimination); "*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as […] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*", which should be an offence punishable by law according to Article 4 (a) of the ICERD; "*public provocation to commit acts of terrorism*", when committed unlawfully and intentionally which should be criminalized (see UN Security Council Resolution 1624 (2005)); "*child sexual exploitation material*" which shall be criminalized as per Articles 2 (c) and 3 (1) (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography", to which Uzbekistan acceded on 23 December 2008. International recommendations also call upon States to enact laws and measures, as appropriate, "*to clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking*", including *"[t]he threat to disseminate non-consensual images or content*", which must be made illegal; see UN Special Rapporteur on violence against women, its causes and consequences, Report on online violence against women and girls from a human rights perspective (18 June 2018), A/HRC/38/47, paras. 100-101. As a comparison, General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance (ECRI) recommends to make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate. See also Council of Europe Committee of Ministers, Recommendation CM/Rec(2022)16 on combating hate speech, adopted by the Committee of Ministers on 20 May 2022, para. 11

against cyberattacks is a fundamentally different issue than protecting society against harmful content**. It would be better, and more in line with good practice, to separate the two concepts. This would provide greater visibility to provisions on the security of information systems and protection against cyberattacks respectively and would help to clarify the different concepts set out in the Draft Code.**

62. Article 123 on the information security of society further aims to prevent "*the use of information media to unlawfully influence or manipulate social consciousness*". Similarly, the same provision talks about establishing a system to counter information attacks aimed at "*disrupting national self-awareness*" or at "*distancing society from historical and national traditions and customs*". These terms are vague and overbroad and it may be difficult, in practice, to differentiate between permissible and impermissible influencing or manipulation of the social consciousness of society (which is equally difficult to define) or to identify attacks on national self-awareness or aimed at distancing society from its roots. **It is unlikely that these vague and overbroad formulations will be implementable in practice without creating potential threats for freedom of expression and information of individuals and legal entities, given that they provide the oversight authorities with considerable interpretative discretion. These kinds of terms should thus either be thoroughly clarified and more strictly circumscribed in line with international human rights standards, or removed from the Draft Code.**

5.1.4. Restrictions Based on Children's Health

63. Article 125 is focused on the protection of children from information harmful to their health which may not be distributed at all in certain facilities. Print materials that contain "information harmful to children's health" may only be disseminated in sealed packaging and prior to public performances of a certain kind, an audio announcement stating its unsuitability for children is required. The Draft Code does not define what kind of information is harmful to children's health, again leaving the interpretation of what this means to the discretion of the competent state authorities. Also, while this kind of ban is perhaps understandable in locations frequented by children, e.g., schools or medical, sports, cultural or other such facilities established for children, certain other establishments mentioned, notably sanatorium or resort facilities or adult physical training or sports facilities, may not be frequented by children. **It would therefore be advisable to clarify what kind of information is considered harmful to children, while at the same time defining the types of locations where such information should not be distributed very clearly and restrictively, to avoid potential violations of the right to freedom of information.**

5.1.5. Restrictions Based on Incitement to Participate in Unauthorized Assemblies

64. Further speech restrictions may be found in Article 128 of the Draft Code on ensuring safety in mass media, including online platforms, which obliges owners of mass media, websites, or other information resources, including bloggers, to disallow and remove certain information on their network or other information resources that are accessible to the public. Next to the understandable ban on calls for violence or mass disorder, this provision also prohibits information inciting participation in unauthorized meetings, rallies, street marches, and demonstrations, as well as the co-ordination of such actions. This prohibition should not lead to a ban on providing information on peaceful assemblies taking place without authorization or spontaneous assemblies. Indeed, it is not necessary under international human rights law for domestic legislation to require

advance notification of an assembly and while a prior notice may be asked for, a notification regime should never be turned into a *de facto* authorization procedure.[75] Moreover, according to the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, domestic legal frameworks should allow for spontaneous assemblies to be held and should explicitly exempt such assemblies from prior authorization or notification requirements.[76] The terminology used in Article 128 is particularly problematic as the current legal system of Uzbekistan does not have a law in force regulating public assemblies; a bill on rallies, meetings and demonstrations of the republic of Uzbekistan was introduced by the Government in 2019,[77] but such law has not yet entered into force.[78] Additionally, the respective wording used in the Draft Code could be interpreted as banning a legitimate public discourse about a potential protest action and would effectively prevent media from covering such issues, thus, undermining media's role in a democratic society and infringing significantly upon media's freedom. **In such situation, it is important to remove the prohibition of co-ordination or calls for such assemblies via mass media outlets from this Draft Code.**

5.1.6. Restrictions Based on the Promotion of Terrorism, "Extremism" and "Separatism"

65. Article 128 bans the promotion of terrorism and ideas of "religious extremism, separatism and fundamentalism". Similar formulations are found in other provisions in the Draft Code, e.g., Article 124. Limitations formulated in vague and overbroad terms will not satisfy the ICCPR requirement that restrictions need to be "prescribed by law", as this means that laws need to be formulated with sufficient precision and foreseeability. Some of the terms used in Article 128 are vague or broad and could make the implementation of the restrictions unpredictable as they may be open to varying interpretations and potentially subject to arbitrary application.

66. As regards the ban on "the promotion of terrorism", UN Security Council Resolution 1624 (2005) has expressly called on states to prohibit incitement to terrorism (rather than its promotion).[79] To be human rights-compliant, the offence of "incitement to terrorism or acts of terrorism" must be prescribed by law in a precise language and (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; (b) be limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed.[80] Additionally, laws must preserve the application of legal defences

75 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, 3rd edition, 2020, para. 25.
76 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, 3rd edition, 2020, paras. 25 and 113.
77 Comments on the Draft Law On Rallies, Meetings and Demonstrations of the Republic of Uzbekistan, OSCE/ODIHR, 2 September 2019.
78 *Gazeta.uz*, The rally bill is being considered in the presidential administration, 31 March 2023.
79 See Resolution 1624 (2005), United Nations, Security Council 14 September 2005, UN Doc. S/RES/1624 (2005), para. 1, which calls on states to prohibit, by law, incitement to commit terrorist acts.
80 See the model offence of incitement to terrorism provided by the UN Special Rapporteur on Counter-Terrorism and Human Rights in the 2010 Report on "Ten areas of best practices in countering terrorism", A/HRC/16/51, 22 December 2010, para. 31. As expressly stated by the International Mandate-Holders on Freedom of Expression *"[i]ncitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring*"; see UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2005 Joint Declaration, Sub-Section on Antiterrorism measures. See also e.g., International Mandate-Holders on Freedom of Expression, 2011 Joint Declaration on Freedom of Expression and the Internet, Section 8 on Security and Freedom of Expression, para. 1 (d). See also OSCE TNTD/SPMU-ODIHR, Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community Policing Approach (2014), page 42; and ODIHR, Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), pages 53 and 55. See also Principle 6 of the Johannesburg Principles on Freedom of Expression and National Security (1995), adopted on 1 October 1995 by a group of experts in international

or principles leading to the exclusion of criminal liability in certain cases,[81] for instance to safeguard legitimate activities[82] or when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.[83] **Hence, this part of Article 128 should be revised to prohibit direct and public incitement to terrorism in a human-rights compliant manner as described above rather than its promotion.**

67. Regarding the ban on information promoting "religious extremism, separatism and fundamentalism", it must be emphasized that there is no consensus at the international level on a normative definition of "*extremism*"/"*extremist*", "*violent extremism*" or "*fundamentalism*".[84] ODIHR, the Venice Commission and other international bodies have raised concerns pertaining to "*extremism*" and "*fundamentalism*" as legal concepts and the vague and imprecise nature of such terms.[85] As noted by ODIHR and the RFoM in their previous Joint Opinion on the Draft Law on Mass Media of Uzbekistan, "*the vagueness of such terms may allow States to adopt highly intrusive, disproportionate and discriminatory measures, as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so-called "extremism" charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of*

law, national security, and human rights and endorsed by the UN Special Rapporteur on freedom of opinion and expression. For reference, see also, for the purpose of comparison, Article 5 of the 2005 CoE's Convention on the Prevention of Terrorism on the "*public provocation to commit acts of terrorism*", defined as "*the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed*".

81 See the model offence of incitement to terrorism provided by the UN Special Rapporteur on Counter-Terrorism and Human Rights in the 2010 Report on "Ten areas of best practices in countering terrorism", A/HRC/16/51, 22 December 2010, para. 31. As expressly stated by the International Mandate-Holders on Freedom of Expression *"[i]ncitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring*"; see UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2005 Joint Declaration, Sub-Section on Antiterrorism measures. See also e.g., International Mandate-Holders on Freedom of Expression, 2011 Joint Declaration on Freedom of Expression and the Internet, Section 8 on Security and Freedom of Expression, para. 1 (d). See also OSCE TNTD/SPMU-ODIHR, Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community Policing Approach (2014), page 42; and ODIHR, Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), pages 53 and 55. See also Principle 6 of the Johannesburg Principles on Freedom of Expression and National Security (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights and endorsed by the UN Special Rapporteur on freedom of opinion and expression. For reference, see also, for the purpose of comparison, Article 5 of the 2005 CoE's Convention on the Prevention of Terrorism on the "*public provocation to commit acts of terrorism*", defined as "*the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed*".

82 For instance, the defence or exercise of human rights and fundamental freedoms, activities of human rights and humanitarian organizations, and other legitimate activities, such as for education, scientific and academic research, legal assistance, journalistic or artistic purposes; see the Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism (28 September 2023), ODIHR, paras. 20-24.

83 See e.g., Legal Analysis of the Proposed Bill C-51, the Canadian Anti-terrorism Act, 2015: Potential Impact on Freedom of Expression, RFoM, May 2015, pages 9-10

84 See 2015 Thematic Report, United Nations, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter "UN Special Rapporteur on Counter-terrorism and Human Rights"), A/HRC/31/65, 22 February 2016, paras. 11 and 21, noting that *"[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an 'elusive* concept". See also Report on the phenomena of fundamentalism and extremism, United Nations, Special Rapporteur in the field of cultural rights, A/HRC/34/56, 16 January 2017paras. 10-11; and 2018 Report on the Mission to Uzbekistan, United Nations, Special Rapporteur on Freedom of Religion or Belief, A/HRC/37/49/Add.2, 22 February 2018, para. 51, where it is emphasized that "*when employed as criminal legal categories, vague terms such as 'extremism' and 'fundamentalism' terms are irreconcilable with the principle of legal certainty as well as being incompatible with the fundamental rights mentioned*". See also Joint Opinion on the Draft Law of Uzbekistan "On Freedom Of Conscience And Religious Organizations, OSCE/ODIHR and Venice Commission 12 October 2020, para. 30; and Joint legal analysis of the draft law on mass media of the Republic of Uzbekistan, OSCE/ODIHR-OSCE/RFoM, November 2021, pp. 18-19.

85 *Ibid.* Joint Opinion on the Draft Law of Uzbekistan "On Freedom Of Conscience And Religious Organizations, OSCE/ODIHR and Venice Commission 12 October 2020, para. 30; and 2018 Report on the Mission to Uzbekistan, United Nations, Special Rapporteur on Freedom of Religion or Belief, A/HRC/37/49/Add.2, 22 February 2018, para. 51. See also, 2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism, United Nations, Special Rapporteur on Counter-Terrorism and Human Rights, 21 February 2020, A/HRC/43/46, paras. 12-14.

unlawful arrests, detention, torture and other ill-treatment […]."[86] **It is thus recommended to revise this part of Article 128 by removing the respective wording, unless the nexus to violence is made clear or they constitute incitement to violence defined in accordance with international human rights standards.**

68. While legal measures addressing "separatism" are intrinsically linked to the principle of respect for territorial integrity and sovereignty of a state, the term "separatism" in itself and its criminalization have no comprehensive basis in international law.[87] It is only in the context of the Shanghai Cooperation Organization, which has a limited number of member states[88] that a definition of "separatism" is provided in the Shanghai Convention on Combating Terrorism, Separatism, and Extremism (2001).[89] There is otherwise no specific mention of "separatism" in international instruments as such and OSCE commitments only marginally refer to "violent separatism" as one of the factors that may engender conditions in which terrorist organizations are able to recruit and win support.[90] A broad interpretation of the term "separatism" could potentially capture writings and speeches reporting on or advocating for minority rights, linguistic or cultural autonomy and related issues, even if there is no real foreseeable risk of violent action or of incitement to violence or any other form of rejection of democratic principles associated with such speech. In principle, demanding territorial changes in speeches and other forms of written or oral expression does not automatically amount to a threat to a country's territorial integrity and national security.[91] A ban on so-called "separatist" ideas should not lead to undue interferences with the legitimate forms of expression as well as with the protection and promotion of the rights of persons belonging to national minorities.[92] **Unless clearly linked to some elements of violence or other criminal means or incitement to violence defined in accordance with international human rights standards, the reference to "separatism" in Article 128 should be reconsidered..**

5.1.7. Restrictions Based on Infringing the Honour or Dignity or Business Reputations of Citizens

69. Article 70 outlines and prohibits the use of mass media for actions that "*lead to administrative and criminal liability*". This provision also goes into more detail, by prohibiting defamation or insult to the honour or dignity or business reputation of citizens. Further, Article 128 does not allow the dissemination of information that "damages the dignity and honour of citizens" and thus invades their personal life. Similarly, Article 70 of the Draft Code prohibits mass media from defaming or insulting the honour and dignity or business reputation of citizens.

70. Article 19(3)(a) of the ICCPR also refer to the protection of the reputation or rights of others (which would also include their business reputation) as a legitimate ground for limiting the right to freedom of expression. Moreover, Article 17(2) of the ICCPR also provides that everyone has the right to the protection of the law from "*unlawful attacks*

86 See Joint legal analysis of the draft law on mass media of the Republic of Uzbekistan, OSCE/ODIHR and OSCE/RFoM, November 2021, pp. 18-19. See also Joint Opinion on the Draft Law of Uzbekistan "On Freedom Of Conscience And Religious Organizations, OSCE/ODIHR and Venice Commission, 12 October2020, para. 30.

87 See Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism (21 September 2020), OSCE/ODIHR, Sub-Section 3.2. See also Comments on the Criminalization of "Separatism" and Related Offences in Moldova (4 December 2023), ODIHR, paras. 47-48.

88 See <Shanghai Cooperation Organization | SCO (sectsco.org)>.

89 See <http://www.cfr.org/counterterrorism/shanghai-convention-combating-terrorism-separatism-extremism/p25184>. Article 1 (2).

90 See, OSCE Bucharest Plan of Action for Combating Terrorism, Annex to OSCE Ministerial Council Decision MC(9).DEC/1, Bucharest, 3-4 December 2001, para. 9.

91 See e.g., as a comparison, ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, judgment of 2 October 2001, para. 97.

92 See Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR, 2014, paras. 205 and 206.

on [one's] honour and reputation". The UN Human Rights Committee's General Comment No. 16 on Article 17 of the ICCPR further provide that "*[p]rovision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible*". At the same time, the protection of the right to privacy is not absolute and limited interference with private life may be justified for the protection of rights and interests of others or in the public interest. In this respect, the UN Human Rights Committee has underlined that "*the protection of privacy is necessarily relative*" and may be restricted, especially in cases where knowledge about an individual's private life is "*essential in the interests of society*".[93] In addition, "*legislation must specify in detail the precise circumstances in which such interferences may be permitted*".[94]

71. Importantly, it is generally accepted that as long as political and public figures are inevitably and knowingly subject to close scrutiny of their every word and deed by both journalists and public at large, they must consequently display a greater degree of tolerance towards criticism[95] and related possible interferences with their right to privacy.

72. Thus, **the limitations on information with potential consequences for the honour and dignity of individuals and their private life should be revised to comply with international freedom of expression standards. Notably, it is recommended to specify that restrictions on media content for respect of the rights or reputation of others are only permissible if, in individual cases, the disclosure of certain information threatens to cause substantial harm to the protected interests, and if the harm outweighs the public interest in disclosure. At the same time, the wording of the Draft Code should ensure that any prohibition aimed at protecting the honour or dignity of individuals does not apply to statements intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics or some other issues of public interest.**

5.1.8. Restrictions Based on Disrespectful Behaviour Towards Society, the State or Parents

73. Finally, the list of prohibited behaviours in Article 128 also includes the dissemination of "*disrespectful behaviour towards society, the state [and] state symbols, including information expressed in an indecent form*", as well as information "*denying family values*" and forming a "*disrespectful attitude towards parents and other family members*". These restrictions are broad and vague and can hardly be properly defined for regulatory purposes, which may provide unlimited discretion to the decision-makers. The wording is overbroad and highly subjective, allowing for nearly unlimited range of issues to fall within the scope of these limitations. This lack of clarity could lead to arbitrary or discriminatory enforcement and would significantly affect the freedom of expression of individuals, but also of mass media outlets.

74. In particular, the meaning of "*disrespectful information towards society*" is overbroad and all-encompassing and can restrict freedom of expression only to specific publicly accepted and/or government-promoted narratives. The UN Human Rights Committee has observed that in circumstances of public debate concerning public figures in the

93 See General Comment No. 16, "Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation", United Nations, Human Rights Committee, 8 April 1988, para. 7.
94 *Ibid.* para. 8.
95 See as a comparison in the European context, the Guide on Article 10 of the European Convention on Human Rights: Freedom of expression, Registry of the European Court of Human Rights updated on 28 February 2023, page 46.

political domain and public institutions, the value placed by the ICCPR upon uninhibited expression is particularly high.[96] States Parties should also not prohibit criticism of institutions, such as the army or public administration[97] since such criticism is an essential element and enabler of public scrutiny, transparency and accountability of governance systems.

75. Similarly to the above, the "denial of family values" may have multiple meanings and may be subject to arbitrary interpretation by public authorities. Restricting freedom of speech to maintain some form of "traditional family" would be a disproportionate limitation of human rights. This wording could *inter alia* lead to a chilling effect and self-censorship over mass media coverage of LGBTI issues, violence against women or reproductive rights and sexual health as well as a stigmatization of anyone whose way of living falls outside of what is considered by the lawmakers as a "traditional family". Many courts worldwide have accepted the dynamic and changing nature of family and family relations.[98] Therefore, family 'values', in itself an unclear term, are a subject of public interest and continuous public debate and freedom of expression in this area should not be unduly and disproportionately restricted. Additionally, the notion of "*form[ing] a disrespectful attitude towards parents and other family members*" cannot be considered as a legitimate restriction of the freedom of expression due to its broad and inherently indefinable meaning. Arguably, broadcasting of any movie, novel or other artistic form of expression in which the complex relations between parents and children are demonstrated and discussed can be banned on the basis of this limitation. This would be a clearly disproportionate interference with freedom of expression and media freedom prohibited by international human rights law.

76. **The above vague and ambiguous terminology needs to be revisited and either defined in a manner that is compliant with international human rights standards, or deleted.**

77. Furthermore, Article 128 of the Draft Code allows individuals whose rights and legitimate interests have been violated due to the failure of owners of mass media, websites, webpages or other information resources, including bloggers, to comply with these content restrictions, to seek legal protection. This protection includes the right to claim compensation for damages, including moral harm. However, the Criminal Code of Uzbekistan stipulates severe sentences for defamation of public officials and state symbols, including imprisonment for up to 5 years, correctional labour, or fines of up to 400 times the minimum wage. Moreover, the Civil Code does not impose a maximum limit on financial compensation for moral damages. Consequently, within the existing legal framework, the content restrictions contemplated in the Draft Code will likely have a chilling effect on freedom of expression and will lead to media self-censorship, unless the provisions pertaining to criminal and civil liability of owners of mass media, websites, webpages or other information resources are revised to ensure the proportionality of sanctions, which shall not include imprisonment unless the said expression is prohibited under international law.[99]

96 General Comment No. 34 on Article 19 Freedoms of Opinion and Expression of the ICCPR, United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 38.

97 *Ibid.* para. 38.

98 See, as examples of regional and national good practice, ECtHR, *Schalk and Kopf v. Austria*, no. 30141/04, 2010; U.S Supreme Court, *Obergefell v. Hodges 135 S. Ct. 2584 (2015)*, Constitutional Court of South Africa, *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005).

99 See General Comment no. 34 on Article 19: Freedoms of Opinion and Expression, United Nations, Human Rights Committee (CCPR 12 September 2011, para. 47, which notes that in defamation cases, "imprisonment is never an appropriate penalty"; see 2020 Report

5.1.9. Monitoring and Removal Obligations

78. The monitoring and removal obligations that **Article 128 imposes on owners of mass media, websites and other information resources, including bloggers, appear too burdensome and should thus be reconsidered entirely**. A requirement to conduct constant proactive monitoring of all communications over the providers' network, or to detect illegal conduct, would constitute an unreasonable burden for them; legislation should only provide for an obligation for subsequent action or control, once they are aware of the illegal nature of the content.[100] If retained, it is important to adopt a graduated and differentiated approach towards the legal obligations applicable in terms of monitoring and deleting comments of third parties under online publications/posts.[101] For instance, legislation could possibly impose on professionally managed internet portals a duty to remove clearly unlawful content – according to international standards – posted by third-party with sufficient expedience.[102] State practice in other OSCE participating States does not require media owners or online resources to conduct proactive monitoring of content to this extent.[103] The obligation to remove content generally presupposes a previous and acknowledged infringement of rights (notice and take-down procedure), or applies only to professionally managed internet portals in cases of clearly unlawful content posted by third party, which is not the same as a general rule imposed on all media outlets to proactively monitor all potentially defamatory and/or otherwise illegal content found online, as set out in **Article 128, which should be reconsidered entirely**. **Moreover, as also pointed out above with regard to overall approach towards media regulation, bloggers should not be treated in the same way as media outlets.**

79. The obligation to remove any information found to be in violation of Article 128 arises from the moment when such information is disseminated, and not after such information has been made known to the owners of mass media, websites and other information resources. As a result, online actors may preventatively censor mass media, websites and even messaging platforms to avoid potential liability, which would not be compliant with the prohibition of censorship set out in Article 73.

RECOMMENDATION G.

To considerably narrow the scope of the content-based restrictions provided in the Draft Code to avoid imposing undue and excessive limitations over media content, including by:

of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/44/49, para. 40; and as a comparison, ECtHR, *Raichinov v. Bulgaria*, no. 47579/99, 20 April 2006, para. 50; *Kanellopoulou v. Greece*, no. 28504/05, 11 October 2007, para. 38.

100 See e.g., as a comparative example, EU Directive on electronic commerce (2000/31/EC), according to which service providers should not be liable for the content posted by the third party on condition that they: (a) do not have actual knowledge of illegal nature of the content or (b) upon obtaining such knowledge or awareness, they act expeditiously to remove or to disable access to the unlawful content.

101 See as a comparison, e.g., ECtHR, *Delfi v. Estonia* [GC], no. 64569/09, 16 June 2015, where the ECtHR found a professionally managed internet news portal run on a commercial basis liable for not taking measures to remove clearly unlawful comments (hate speech) posted by a third party on its platform; see also *Sanchez v. France* [GC], no. 45581/15, 15 May 2023, the ECtHR found a politician liable for failing to promptly delete clearly unlawful comments published by third parties on his public Facebook wall.

102 See ECtHR, *Delfi v. Estonia* [GC], no. 64569/09, 16 June 2015.

103 See also e.g., ODIHR, Opinion on the Draft Law of Ukraine on Combating Cybercrime (2014), para. 64. See also, as a good practice example, a recent decision of a domestic court: In 2020, the Austrian Supreme Court noted that companies like Facebook should monitor content in "specific cases", where a court has identified user content as unlawful and where "specific information" needs to be monitored to prevent content judged to be illegal from being reproduced and shared by another network user later, with the overarching aim of preventing future violations (see Supreme Court of Austria, *Judgment of 15 September 2020 - 6 Ob 195/19y* (German). Natasha Lomas, 12 November 2020, <https://techcrunch.com/2020/11/12/facebook-loses-final-appeal-in-defamation-takedown-case-must-remove-same-and-similar-hate-posts-globally/> [accessed on February 14, 2024]).

1. Removing all the restriction grounds that are overly broad and vague and/or do not appear to pursue legitimate aims for restricting freedom of expression and/or are not necessary under international human rights law, including: language norms (Article 90); speculation on the outcome of judicial cases (Article 70); unlawful influence or manipulation of social consciousness (Article 123); incitement to participate in unauthorized meetings (Article 128(3)); promotion of "extremism", "fundamentalism" and "separatism" - unless clearly linked to some elements of violence or other criminal means or incitement to violence defined in accordance with international human rights standards (Article 128(5)); denying family values and forming a disrespectful attitude towards parents and other family members (Article 128(10)); and disrespect towards society, the state or state symbols (Article 128(8)).
2. Clearly defining in Article 125 the types of information considered harmful to children, and specifying the types of locations where such information should not be distributed very clearly and narrowly.
3. Specifying that restrictions on media content for respect of the rights or reputation of others are only permissible if, in individual cases, the disclosure of certain information threatens to cause substantial harm to the protected interests, and if the harm outweighs the public interest in disclosure, while ensuring that any prohibition aimed at protecting the honour or dignity does not apply to statements intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics or some other issues of public interest (Article 70(2) and 128(7)).
4. Removing the general obligations applicable to all media outlets related to proactive monitoring of content (Article 128(14) and (15)).

5.2. Compulsory Registration

80. According to the Draft Code, mass media outlets need to be registered by definition (see Article 2), though Article 80 sets out exceptions to this rule for entities established by state bodies, print publications and media and radio programmes of enterprises, institutions, and organizations, insofar as these are limited to publishing/broadcasting for their own limited purposes.

81. Generally, an obligation for media entities to register creates an additional burden on the founders, especially for small online outlets with limited institutional and financial capacity. As underlined by the UN Human Rights Committee, regulatory systems should take into account the differences between the print and broadcast sectors and the Internet, while also noting the manner in which various media converge (see also para. 50 above).[104] The registration process mentioned in Article 79 treats all mass media outlets the same, without differentiating between the print and broadcast sectors, and the Internet. At the same time, the process itself is not outlined in the Draft Code – rather, Article 79 states that "*relations in the field of state registration of mass media*" shall be regulated based on the Law of the Republic of Uzbekistan "On Licensing, Permitting and Notification Procedures". Moreover, the procedure for the state registration is determined by the Cabinet of Ministers of the Republic of Uzbekistan.

104 See General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 39.

82. In particular, restrictions on publications of print media need to align with the strict requirements set out in Article 19(3) of the ICCPR.[105] Examples from other OSCE participating States show that some countries have opted out of requiring registration for print media (Canada, Germany, the Netherlands, Norway, Ukraine, the United Kingdom and the United States). In the United Kingdom, only TV and radio broadcasting media are required to register. However, this is overseen by independent bodies, not state organs.[106] Similarly, in Ukraine, only radio and TV broadcasting outlets are expected to be registered while registration of online media is voluntary and provides certain benefits.[107]

83. In relation to the broadcasting media, a requirement to obtain a license would only be justified where the distributor aims at using scarce infrastructure technologies (such as terrestrial frequencies)[108] but not vis-à-vis other cases (e.g. cable and satellite) where in principle, according to good practices in the OSCE, the European Union and the Council of Europe, a mere notification to the competent telecommunications authority would suffice.[109] **Consequently, the Draft Code should distinguish between print, broadcast, and the Internet media and the requirement to obtain a certificate of state registration should only be retained for the use of scarce infrastructure technologies (such as terrestrial frequencies) while for others, a mere system of notification should apply.**

84. Moreover, to oblige a mass media outlet that only operates a website as its form of content dissemination to register is against international good practice. As stated by the OSCE RFoM in the past, *"[s]tates should not impose mandatory registration to online media as a precondition for their work which can have a very negative effect on media freedom"* because such practice could seriously restrict the public's access to diverse sources of information.[110] **The registration of a domain name with the proper authority may be required to operate a website, but no other registration obligation should be imposed**. It is also recognized that online media self-regulation and the option for the online media to opt-in and to choose to belong to such a self-regulatory regime is generally an alternative option to minimise state interference with media content online, while allowing media to fulfil its role as watchdog.[111]

85. In the interests of transparency, and also to protect the rights of mass media outlets, it is further important that the main elements of the registration process are outlined in the Draft Code. Bearing in mind the above principles, the relevant provisions need to be formulated with precision, to ensure that the registration process aligns with the requirements of Article 19(3) of the ICCPR. In this respect, the registration procedure should be neither unduly cumbersome nor subject to arbitrary interpretation and/or application. The UN Human Rights Committee in its General Comment No. 34, underlined that states must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations, and the criteria for the application of such conditions and license fees should be reasonable and objective,

105 *Ibid*.
106 See the Media Law of the United Kingdom.
107 See Article 50 of the Law on Media of Ukraine.
108 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 39.
109 See e.g. Legal Analysis of the Law of the Republic of Armenia "On Audiovisual Media" (Adopted on 16 July 2020), OSCE/RFoM, p. 4.
110 OSCE media freedom representative expresses concern regarding new registration system and threat of potential closure of online portals in Albania, OSCE Representative on the Freedom of the Media,18 October, 2018.
111 See e.g. The Online Media Self-Regulation Guidebook (2013), RFoM, pp. 77-78; see also e.g., Ensuring Independent Regulation for Online/Citizen Media, LSE Media Policy Project, 2014.

clear, transparent, non-discriminatory and otherwise compliant with international human rights standards.[112] **Consequently, the registration process should be set out in the Draft Code and be neither unduly cumbersome nor subject to arbitrary interpretation and/or application, while not requiring information or documents that go beyond what is strictly necessary to the purpose.**

RECOMMENDATION H.

1. To adopt a graduated and differentiated approach to media governance depending on the type of media to be regulated, and to limit the compulsory registration only to media outlets using scarce infrastructure technologies (such as terrestrial frequencies) while applying a simple system of notification for other media outlets.
2. To outline the main elements of the registration procedure in the Draft Code, while ensuring that the registration procedure is neither unduly cumbersome nor subject to arbitrary interpretation and/or application and does not require information or documents that go beyond what is strictly necessary.

5.3. Suspension of Publication and Termination of a Mass Media Outlet

86. According to Article 83 of the Draft Code, the suspension or termination of publication of a mass media outlet takes place either by the founder, or by court decision initiated by the registering authority. The suspension of publication will occur in cases where the respective mass media outlet has committed a legislative violation, and where this violation has not been rectified within a month of repeated written warnings issued by the registering authority. In case the violation is rectified, publication can resume once the editorial office has provided evidence of this fact.

87. The grounds for suspending publication as set out in Article 83 are very general, and do not reveal which kinds of legislative violations would trigger warnings that, if not responded to, could lead to suspension. If taken at face value, this provision may indicate that any violation of national legislation, however, small or insignificant, could potentially have such very serious consequences. Article 19(3) of the ICCPR requires not only that limitations of the right to freedom of expression are set out in law, but also that such laws are formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.[113] Notably, a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.[114] The current grounds for suspension are overly broad and vague, and hence not foreseeable, as they do not allow mass media outlets to discern which kinds of violations could eventually lead to suspension of production activities. Moreover, this unclear wording also provides the registration authority with wide discretion with respect to the question of which violations may lead to warnings, and thus, in case these warnings are ignored, to suspension. In some cases, application of Article 83 would not comply with the requirement of proportionality, according to which the sanction should be balanced against the severity of the violation, and the minimum effective sanction should be applied as a consequence of a given violation.

112 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 39.
113 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 25
114 *Ibid.*

88. Additionally, it is not clear from the wording of Article 83 whether national courts would be verifying the validity of the warnings or simply ensuring the existence of such warnings as a necessary precondition before confirming the suspension of publication. The Draft Code also does not indicate whether the warnings themselves can be appealed and whether courts can consider their validity, although this could be regulated separately in other legislation. In any case, it is important that every warning issued by the state bodies can be subject to judicial review. **It is thus recommended to clearly, narrowly and exhaustively define the grounds for suspension of publication of a mass media outlet; to clarify the legal procedures leading up to potential suspension of production activities; and to also specify the role and discretion of the courts in this context.**

89. According to Article 83(6), the publication by a mass media outlet can be terminated by court decision in the following circumstances: (1) in case of consistent gross violations of the Code and other legal documents by the editorial office, with previous warnings issued to the founder and/or editorial office by the registering authority; (2) in case of non-compliance with a court decision to suspend publication; (3) if there have been no publications of the mass media outlet for more than six months; or (4) in other cases stipulated by law. The termination of publication leads to the termination of the validity of the registration certificate.

90. Again, the "consistent gross violations" of the Code and other legal documents are not formulated with sufficient precision to be foreseeable; the Draft Code, including its final Chapter 16, which sets out different violations of the Code that lead to liability, does not indicate which violations are considered to be sufficiently serious to qualify as "gross violations". Moreover, there is no indication of the number of warnings that would lead to an application for termination, and also here, it is not clear whether the court would look at the validity of such warnings or not. As with the grounds justifying suspension of publication above, this ground for termination of a mass media outlet is thus not in line with the requirements of Article 19(3) of the ICCPR as it is not formulated with sufficient clarity and precision, it is not clear which legitimate aim it is intended to achieve, and there is no proper justification provided for its necessity and proportionality. The same applies to the fourth ground for termination set out in Article 83(6) – it is unclear which other laws may lead to the termination of publication.

91. While it is understandable that the lack of compliance with a previous court decision on suspension may eventually lead to the termination of publication, Article 83 does not mention whether the court would evaluate the reasons for suspension or not before issuing its termination decision. Moreover, there is no mentioning of any form of appeals proceedings against either suspension or termination decisions which in principle should always be subject to judicial review.

92. Also, the provision outlining that termination of publication may be effected if a mass media outlet has not published products for more than six months is problematic. While it is understandable that there should be some way of de-registering media outlets that only exist on paper or that do not function for a lengthy period of time, forcing a media company to cease operations after only six months of being inoperative is not duly justified and could be overly burdensome especially for newer and smaller outlets. **At a minimum, the period of inactivity which would trigger the suspension or termination of a media outlet should be significantly extended, for example to one year or more.**

93. **It is thus recommended that the grounds for termination are clearly, narrowly and exhaustively defined in compliance with the requirements of international human rights law, while ensuring that the suspension and termination of mass media are treated as sanctions of last resort and constitute proportionate response to the violations that were committed.**

RECOMMENDATION I.

To clearly, narrowly and exhaustively define the grounds for suspension and termination of mass media listed in Article 83 and ensure that such sanctions are treated as measures of last resort and are proportionate to the violations that were committed, while significantly extending the period of inactivity which may trigger suspension or termination, for example to one year or more.

6. ABSENCE OF AN INDEPENDENT MEDIA REGULATORY BODY

94. The Draft Code does not specify in detail which state bodies are responsible for overseeing the implementation of key elements of the Code. However, Article 25 outlines the main direction of the participation of state authorities and administrative bodies in the field of information, which mainly include creating an environment conducive to the implementation of the Code. Article 26 contains numerous principles to ensure the transparency of the activities of state bodies, and Chapter 5 outlines procedures on how to ensure such transparency in practice, involving numerous provisions describing multiple proactive disclosure obligations for state bodies and organizations to ensure that the population is well-informed about their mandates and activities.

95. With respect to regulation of mass media, the Draft Code refers to the registration authority, but does not indicate which body that is; presumably, it is the Agency of Information and Mass Communications under the Administration of the President of the Republic of Uzbekistan, as Articles 81 and 86 mention certain information obligations of mass media founders and editors vis-à-vis this Agency. The Law on Mass Media also provides that the afore-mentioned Agency is the main state authority in the media sector, which functions as a *de facto* media regulator and adjudicator. Additionally, the Cabinet of Ministers has important functions under the Draft Code as well, as it determines the procedure for organizing the protection of information resources and information systems containing state secrets and confidential information, but also their restriction (Articles 23, 127 and 128), the procedure for state registration of mass media (Article 79), as well as the procedure for distributing foreign mass media products within the territory of Uzbekistan (Article 91).

96. Same as the Law on Mass Media, the Draft Code thus does not provide for an independent media regulatory body, as recommended at the international level.[115] More specifically, regarding licensing in case of scarce infrastructure technologies as mentioned above, the UN Human Rights Committee has recommended that State Parties should establish an independent licensing authority, with the power to examine

115 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 39. See also, for comparative purposes, Recommendation REC(2000)23, "on the independence and functions of regulatory authorities for the broadcasting sector", Council of Europe, adopted by the Committee of Ministers on 20 December 2000.

applications and to grant licenses to broadcasters.[116] Regarding regulatory authorities for the broadcasting sector in particular, the Council of Europe Committee of Ministers' advice may provide useful guidance, noting that States should "*ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence".*[117] While the aforementioned recommendations focus specifically on the broadcasting sector, at the international level the same principle has been put forward in respect to the entire media sector, irrespective of the technology utilized to transmit information.

97. **In any case, it is recognized that any institution overseeing the media should be independent and impartial**, while acknowledging that **media self-regulation appears to be an option to increase media accountability and public trust in the media that offers more flexibility than state regulation and upholding freedom of expression and professional standards**.[118] As underlined in the 2023 Joint Declaration of the International Mandate-Holders on Freedom of Expression, *"States should ensure that all public bodies which exercise powers in print, broadcast, other media and/or telecommunications regulation, including bodies that receive complaints from the public, are independent, transparent, and effectively functioning in law and in practice. They should be protected from undue interference, particularly of a political or commercial nature. The legal status of these bodies should be clearly defined and their institutional autonomy and independence guaranteed and protected by law."*[119] Similarly, the previous Joint Opinion on the Draft Law on Mass Media of Uzbekistan of ODIHR and the RFOM also noted that "*any legitimate media regulator should enjoy political, functional, managerial and financial independence from the Government, as well as from political, commercial and other interests".*[120] Notably, a number of OSCE participating States have entrusted independent bodies with media regulation.[121]

98. In light of the above, **it is recommended to consider establishing a separate independent media regulatory body and ensure that media regulation is independent in law and in practice.**

RECOMMENDATION J.

To consider establishing a separate independent media regulatory body, which would be effective and independent both in law and in practice, while also promoting media self-regulation.

116 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 39.

117 See, as an example of regional good practice, the Council of Europe, 'Recommendation Rec(2000)23, "on the independence and functions of regulatory authorities for the broadcasting sector", adopted by the Committee of Ministers on 20 December 2000, para. 1.

118 See e.g. Joint Declaration on Freedom of Expression and Responses to Conflict Situations, International Mandate-Holders on Freedom of Expression, 4 May 2015, clause 4(a), note 9; Joint Legal Analysis of the Draft Law on Mass Media of the Republic of Uzbekistan, OSCE/ODIHR-OSCE/RFoM, November 2020, Chapter 2; and Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, Venice Commission, CDL-AD(2020)013, paras. 34-37. Regarding media self-regulation, see e.g., The Importance of self-regulation of the media in upholding freedom of expression, UNESCO, 2011; The Online Media Self-Regulation Guidebook, OSCE/RFoM, 2013; and The Media Self-Regulation Guidebook, OSCE/RFOM, 2008. See also Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, Venice Commission CDL-AD(2020)013, paras. 34-37; and Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2023, p. 9.

119 See Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2023.

120 See e.g. Joint Legal Analysis of the Draft Law on Mass Media of the Republic of Uzbekistan, OSCE/ODIHR-OSCE/RFoM, November 2020, Chapter 2.

121 See for example within the European Union, Media regulatory authorities and the challenges of cooperation (2021), European Audiovisual Observatory and the EPRA, Chapter 3.

7. THE STATUS, RIGHTS AND ACCREDITATION OF JOURNALISTS

7.1. The Definition of Journalists

99. Article 2 of the Draft Code defines a journalist as "*a person who collects, analyzes, edits, prepares, and distributes news and materials for mass media based on labor or other contractual relations*". This definition appears to diminish the scope of who may be considered a journalist. Even though the term mass media is quite broad, there are journalists who are not associated with any form of mass media, and work on their own. According to internationally accepted approach, professional full-time reporters and analysts, as well as others who engage in forms of self-publication in print, on the internet, or elsewhere, could also be considered as those performing journalistic function.[122] The Draft Code, however, defines bloggers as mass media outlets, and thus deprives them of the protections and rights provided to journalists, including the right to be accredited as such (see also Sub-Section 7 below). **It is recommended to revisit the definition of journalists and adapt it to the broader, more internationally accepted definition, to avoid gaps in the Draft Code.**

7.2. The Rights of Journalists

100. Chapter 13 deals with journalistic activity and covers the rights of journalists (Article 105), obligations of journalists (Article 106) as well as matters such as secrecy, professional ethical standards, activities and accreditation of journalists (Articles 107 – 116). The rights of journalists include the right to conduct investigations, but also to refuse to execute assignments from mass media entities if they lead to violations of the law, decline to sign or request the withdrawal of a report or material from publication if content is distorted during editing, and demand confidentiality of an information source or an author's name. This latter right would appear to be *vis-à-vis* the editorial office of a mass media outlet.

101. Moreover, Article 107 provides that confidential information, facts or events voluntarily provided by citizens or other information sources under the condition of anonymity are considered secrets in the field of journalism. According to the same provision, journalists may not disclose such information that is considered secret without the consent of the source of the information and may not use such information "for selfish reasons" or the interests of third parties.

102. Despite the importance that the Draft Code thus accords to confidential information and sources, the rights listed in Article 105 do not include the right of journalists to refuse to disclose their sources. Instead, the protection of journalistic sources of information is formulated as a negative duty in Article 107. Journalists' right not to disclose their sources is an essential pillar of press freedom and should be strictly protected.[123] **Thus, it is recommended to amend these provisions to ensure that the right not to disclose journalists' sources is framed as a positive right.**

103. Moreover, Article 107 seems to suggest that information provided in confidence may not be used by journalists without the consent of the source of this information, even though this information may be very important to the public e.g., be of a significant public interest. Unless due to a translation error, it would appear to be unnecessarily

122 See e.g., *op. cit.*, footnote 7, para. 44.
100 See e.g., Safety of Journalists Guidebook, OSCE/RFoM (3rd ed., 2020, p. 65. See also, as a comparative example, ECtHR, *Goodwin v. United Kingdom* [GC], no. 17488/90, 27 March 1996, para. 39.

restrictive to prohibit journalists from using information obtained in this manner and would seem to suffice if journalists are granted the right not to reveal their sources, rather than banning non-consensual use of information provided in confidence outright. **This provision should be revised accordingly.**

7.3. The Accreditation of Journalists

104. The accreditation process is described in Article 112. While this provision outlines which bodies may provide accreditation, and the rights that accredited journalists have, it also relies on the Draft Code's definition of journalists for accreditation (see Sub-Section 7.1 above). This may lead to a situation where *de facto* journalists not associated with a mass media outlet (and certainly bloggers) can never be accredited as journalists in Uzbekistan, with exceptions to this rule largely up to the discretion of the accrediting authority.

105. In addition, Article 112 neither imposes any unified standards according to which the accreditation bodies should establish their accreditation rules, nor does it contain any mention of legal remedies in cases where accreditation is refused to domestic journalists. A side-effect of such arrangement could be that only certain journalists, who are favoured by the respective authorities, are successfully accredited. If this is the case, this goes against the principles of media pluralism and diversity and would not be compliant with an OSCE recommendation stating that *"[a]ccreditation should not be the basis on which governmental bodies decide whether to allow a particular journalist to attend and cover a public event*."[124]

106. In principle, accreditation should not be used as an instrument to limit the media's right to access information. Instead, its key purpose is rather technical – to ensure that there is enough space at a given venue for the media wishing to attend a specific event or similar considerations.[125] In this regard, it is concerning that public bodies or institutions can enforce their own (potentially diverging) accreditation rules without providing for necessary safeguards against possible abuse aiming to limit media's access to information. As emphasized by the OSCE "*the guidelines for issuing accreditation should be drawn up with the aim to promote pluralism, should be transparent and available to the public, should be applied impartially and without arbitrary exceptions. Refusal of accreditation should be accompanied by the right on the part of the applicant to dispute the reasons for the refusal*".[126] **While the Draft Code may not in itself regulate the accreditation procedure, it should require the accreditation process to be simple, transparent and inclusive, while the accreditation rules should be publicly disclosed and the grounds for refusal should be clearly defined with a possibility for effective appeal.**

RECOMMENDATION K.

1. To revisit, in Article 2, the definition of journalists and adapt it to a broader, more internationally accepted definition, to ensure that professional full-time reporters and analysts, as well as others who engage in forms of self-publication in print, on the internet, or elsewhere, could also be considered as

124 Special Report: Accreditation of Journalists in the OSCE area - Observations and Recommendations, OSCE, 26 October, 2006,
125 General Comment No. 34, "on Article 19 Freedoms of Opinion and Expression of the ICCPR", United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 44.
126 Special Report: Accreditation of Journalists in the OSCE area - Observations and Recommendations, OSCE, 26 October, 2006, page 5.

performing journalistic function and hence, benefit from the protection afforded by the national legislation and international human rights law.

2. To revise Articles 105 and 107 to ensure that the right of journalist not to disclose their source of information is framed as a positive right.
3. To make the accreditation process for journalists in Article 112 accessible, transparent and inclusive, while ensuring that the respective rules are publicly disclosed and the grounds for refusal clearly defined with a possibility of effective appeal; unaffiliated journalists should also have the right to be accredited.

8. STATE MEDIA

107. As it could be inferred from the text of the Draft Code (Article 61), the system of state audiovisual media is going to be retained in the Republic of Uzbekistan with state media also being tasked with some public-relation-like function. This approach does not comply with the international good practices in the area. In the 2023 Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression emphasized that all government or State media should be transformed into public service media without further delay.[127] It is indeed a high priority task for a state to ensure that all media which receive primarily public funding are independent politically, financially, and managerially, and form a functioning system of public service media. **It is, therefore, recommended to consider excluding references to the state media from the current Draft Code, consider the possibility of transformation of all state media into genuine public service media and develop and adopt specific legislation to this end.**

108. It is also worth noting that unless due to a translation error, the definition of public media, as it stands now in Article 63 of the Draft Code, does not correspond to the established understanding of what should constitute audiovisual public service media and instead, would be more fitting to describe community media.

RECOMMENDATION L.

To consider excluding references to the state media from the current Draft Code, to consider the possibility of transformation of all state media into genuine public service media and develop and adopt specific legislation to this end.

9. LIABILITY AND SANCTIONS

109. Chapter 16 sets out so-called final rules, which are about the resolution of disputes (Article 129), but otherwise mainly list different kinds of violations of the Draft Code, and the liability that they entail. That being said, however, the provisions are all very vague and general and do not indicate what form of liability they will lead to (criminal, administrative or civil), nor what kind of procedures will determine such liability.

127 Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2 May 2023, page 4, para. d).

110. Rather, the provisions under Chapter 16 refer to procedures from other pieces of legislation, without specifying which legislation that is and what kinds of procedures they are referring to.[128]

111. While it is assumed that some of the described actions, notably those involving attacks, threats, destruction and falsification, may be criminal actions, it is difficult to determine the classification of others in the national legislation. The provisions set out in Chapter 16 do not provide individuals or legal entities with any details as to what kind of behaviour is prohibited and which sanctions it could result in, and what kind of behaviour is not prohibited. These legal norms are thus not formulated with the clarity, precision and foreseeability that is required from legislation that has the potential to interfere with the exercise of human rights.

112. **It is thus recommended to revise the entire Chapter 16, by either reformulating the respective violations in greater detail and clearly and narrowly defining the respective sanctions, or by introducing clear references to other laws, criminal, administrative or civil, that outline the actual prohibited behaviour and the respective consequences with more precision.**

RECOMMENDATION M.

To revise the entire Chapter 16, by either reformulating the respective violations in greater detail and clearly and narrowly defining the respective sanctions, or by introducing clear references to other laws, criminal, administrative or civil, that outline the actual prohibited behaviour and the respective consequences with more precision.

10. Recommendations Related to the Process of Preparing and Adopting the Draft Code

113. OSCE participating States have committed to ensure that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*" (1990 Copenhagen Document, para. 5.8).[129] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* (1991 Moscow Document, para. 18.1).[130] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline that "*all interested parties and stakeholders should have the opportunity to access the*

128 For example, Article 129 states that disputes arising in the field of information shall be resolved in accordance with procedures established by legislation, while Article 130 states that individuals found guilty of violating the laws stipulated in the Information Code shall be held accountable in accordance with the established procedures. The types of violations depicted in Chapter 16 range from violations of information circulation procedures in information systems (Article 131) to the destruction, moderation and falsification of information resources (Article 132) to disruptions, attacks, and threats to information systems (Article 133). The unauthorized disclosure of information resources, the disclosure of personal information and the disclosure of information pertaining to the author of an ongoing citizens' appeal (Articles 134, 135 and 137) are likewise covered in this chapter, as are the failure to ensure transparency in the activities of state authorities (Article 136), and the violations of procedures for disclosing details of websites, social networks and instant messaging services, of advertising durations and of regulations related to advertising restricted information respectively (Articles 138 – 140), as well as the obstruction of mass media activities (Article 141). All of the above provisions simply state that the above behaviour leads to accountability according to law or according to established procedures, without defining these. Article 141 does not even go into detail with respect to the prohibited actions, but simply talks of individual accountability for "violating legislation pertaining to mass media".

129 See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), CSCE/OSCE, 29 June 1990.

130 See Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (Moscow Document), CSCE/OSCE, 3 October, 1991.

lawmaking process, be informed about it and be able meaningfully to participate and contribute".[131] The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input and may be a useful source of good practice.[132]

114. It is understood that the Agency of Information and Mass Communications under the Administration of the President of the Republic of Uzbekistan posted an initial version of the Draft Code online for public comments on 14 December 2022.[133] From the information made available to ODIHR and RFoM, it seems that the drafters provided quite short deadlines (15 days) for the submission of comments. There is also no clear indication as to the extent to which public input has been taken into consideration and reflected in the revised Draft Code under review. It is further unknown whether consultations have been held on the revised draft.

115. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society. They should also provide sufficient time for stakeholders to prepare and submit recommendations on draft legislation, while it is a good practice for the public authorities to provide meaningful and qualitative feedback in due time on the outcome of every public consultation, including clear justifications for including or not including certain proposals.[134] To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the entire process*,[135] meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). While the willingness to engage with the public on the draft is welcome, the modalities of such public consultations and the lack of adequate and timely feedback mechanism may raise doubt as to whether the public consultations were meaningful and inclusive as mentioned above.

116. In light of the above, **the public authorities are encouraged to ensure that the current version of the Draft Code is subjected to further inclusive, extensive and meaningful consultations, including with representatives of civil society and of the media, offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely and meaningful manner, at all stages of the law-making process, including before Parliament. In particular, future consultations should provide stakeholders with more time to submit their feedback. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Code and its impact should also be put in place that would continuously evaluate the operation and effectiveness of the Draft Code, once adopted.[136]**

[END OF TEXT]

131 See Guidelines on Democratic Lawmaking for Better Laws, OSCE/ODIHR, 16 January 2024, Principle 7.
132 See Rule of Law Checklist, Venice Commission, CDL-AD(2016)007, Part II.A.5.
133 See <ЎЗБЕКИСТОН РЕСПУБЛИКАСИ АХБОРОТ КОДЕКСИНИ ТАСДИҚЛАШ ҲАҚИДА (gov.uz)>.
134 See e.g., Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.
135 See Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR, 2014, Section II, Sub-Section G on the Right to participate in public affairs.
136 See e.g., International Practices on Ex Post Evaluation, OECD, 2010.