Vienna/Warsaw, 6 August 2025

Joint Opinion-Nr.: FOM-MNG/546/2025 [NR]

JOINT OPINION ON THE DRAFT LAW ON FREEDOM OF MEDIA

MONGOLIA

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 Opinion has benefited from contributions made by **Dr. Dominika Bychawska-Siniarska**, PhD, Human Rights Lawyer; and **Dr. Paolo Cavaliere**, Senior Lecturer of Law at the University of Edinburgh Law School.

Based on an unofficial English translation of the Draft Law provided by the requesting authority.

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

OSCE Office for Democratic Institutions and Human Rights

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

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

This Opinion analyses the Draft Law on Media of Mongolia which complements the legal framework for the regulation of media in Mongolia, with the stated goal of ensuring transparency, accountability, and independence of the media sector, in line with democratic standards.

The analysis acknowledges the ambition of the Draft Law to consolidate various provisions aimed at ensuring democratic development of the media sector and to introduce modern regulatory mechanisms. Key provisions of the Draft Law include the legal definition and scope of journalistic activity, the establishment and operation of media organizations, he protection of editorial independence and journalistic sources as well as media transparency. The Draft Law introduces transparency requirements for media ownership, defines journalists' rights – particularly the right to protect confidential sources – and outlines core ethical and professional principles for media actors. The Draft Law further distinguishes between types of media organizations, including public, commercial, and "joint media organizations", which are non-profit legal entities established at the local level by groups of citizens. It also affirms that any international treaties ratified by Mongolia take precedence over conflicting domestic provisions, reinforcing its alignment with international obligations

At the same time, several provisions of the Draft Law raise concerns in light of Mongolia's OSCE human dimension commitments and its obligations under international human rights law, in particular where it concerns freedom of expression and media freedom.

Key concerns include insufficient legal clarity of certain proposed definitions; apparent lack of an independent regulatory authority in the media sector; inclusion under the scope of legal regulation of certain matters which would rather be subject to self-regulation or co-regulation; absence of necessary guarantees to ensure protection against Strategic Lawsuit Against Public Participation (SLAPPs).

The OSCE recommends revising the draft to ensure that regulatory mechanisms are clearly defined, proportionate, and include safeguards for independence and freedom of expression. Definitions should be narrowed to avoid covering individual expression or non-institutional communication. Regulatory authorities should be independent and operate with full transparency and accountability.

The OSCE stands ready to support Mongolia in further revising the draft to align it with its international commitments and to ensure a free, pluralistic, and independent media environment.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further enhance the Draft Law:

A. With respect to the scope;

1. To reflect that journalistic duties should generally be subject to self-regulation and/or general contractual relations rather than specific legal regulation aimed at the media sector, as states should encourage the adoption of voluntary professional standards and media self-regulation (with the exception of general legal provisions regulating serious forms or hate speech, propaganda for war or incitement to violence). [par 22]

2. To supplement the Draft Law to encompass the full spectrum of digital journalism and media distribution to ensure it remains relevant, future-proof, and aligned with evolving international norms and practice; [par 28]
3. To include in the Draft Amendments legal and procedural safeguards against Strategic Lawsuits Against Public Participation, such as early dismissal provisions, security for costs, reimbursement of legal costs for the defendant, and judicial awareness of defamation abuse; [par 33]

B. With respect to definitions:

1. To adopt a functional approach to journalism and to ensure that the definition of "journalist" in Article 4.1.4 includes not only professionals but also individuals performing journalistic functions independently, such as freelance journalists, support staff, and those operating through online platforms, like influencers, provided they engage in journalistic activities and perform journalistic function; [par 34-35]
2. To amend the definition of "editorial office" in Article 4.1.5 to reflect broader editorial functions beyond fact-checking, in line with established media practices and the CoE Recommendation CM/Rec(2011)7; [par 42]
3. To ensure greater clarity and prevent the overreach of regulatory measures, it is recommended that the definitions of misinformation and disinformation be revised to include a requirement that the information in question be "verifiably false, inaccurate or misleading". Additionally, the policy- and lawmakers should seek to address the problem of disinformation by also using alternative (non-legal) means of countering disinformation; [par 47]

C. To clarify Articles 6.1 and 6.3 to ensure that these do not unduly prevent legitimate state regulation where it is required by the international human rights law and applicable standards and in particular, by Article 20 ICCPR; [par 57]

D. To supplement the Draft Law or other pieces of legislation with mechanisms to ensure the financial sustainability of media outlets – with a view to promote media pluralism and quality journalism; [par 59]

E. With respect to media organization and public broadcasting:

1. To entrust oversight of a media organization to a regulatory body that operates independently from the executive branch in order to safeguard editorial independence and protect against political influence; [par 62]
2. To amend and supplement the provisions governing broadcasting service with international outreach to provide a clearer and more effective governance framework for this entity to ensure its independence and impartiality, with specific indication of its accountability, independence, and funding structure, as well as its remit and purpose. To this end, the legal drafters should consider whether to include a more detailed framework for this public service broadcasting

with international outreach in the Draft Law or in the Law on Public Radio and Television, or to attribute the same mandate to the commercial sector, for instance through a licensing scheme; [par 66]

F. To clarify and narrowly define the permissible functions of local self-government media or other types of legal entities with state-owned or local-owned participation to operate media outlets with a view to ensure compliance with international standards and to avoid the misuse of local media for political ends; [par 73]

G. To consider including in Article 12.1 of the Draft Law a reference to media-specific criteria that must be used to assess concentration within the media sector, such as impact on pluralism, audience reach, cross-media holdings, or editorial dominancy; [par 78]

H. With respect to media self-regulation:

1. To frame media self-regulation provisions more as an encouragement than a mandate, in order to ensure the flexibility and genuine media sector ownership needed for effective self-regulation; [par 93]

2. To supplement Article 14 suggesting for self-regulation to encourage comprehensive equality principles to prevent and combat discrimination, sexism and misogyny in media content, ensure the equal visibility and valorization of women and their objective portrayal in the media, but also promote gender balance and diversity within the media sector work force, at all levels, including decision-making, while putting in place policies and accessible complaints mechanisms in case of discrimination and harassment; [par 95]

I. With respect to source protection:

1. To revise the definition of ‘source’ to exclude ‘facts’ in order to avoid inadvertently extending legal protections to raw information rather than to the individuals who provide it, which could distort the intended scope of the Draft Law and to broaden the definition to reflect that a source can be any individual or entity providing information, whether directly or indirectly; and that protection should extend not only to the identity of the source but also to any data that could lead to their identification; [par 112]

2. To clarify in the Draft Law that any exception from the right to protect journalistic sources must be narrowly framed, limited to circumstances where disclosure is necessary to prevent serious harm and where no less intrusive alternative is available. Any such exception should be subject to judicial oversight and be grounded in the principles of necessity and proportionality as reflected in the international standards; [par 117]

3. To clarify in the Draft Law that the shift of responsibility to the source applies exclusively to live broadcasting, in order to prevent overly broad interpretations. It would be advisable to revise the provision so that editorial responsibility remains with the journalist or media outlet that decides to publish. A source

may be exposed to liability where it can be shown that they knowingly provided false or unlawfully obtained material with malicious intent; [par 122]

J. To amend Article 5.1.3 of the Draft Law to emphasize that there is no hierarchy between the three values in the abstract and that they need to be balanced on a case-by-case basis and to ensure that secrecy laws are precise, proportionate, and do not facilitate over-classification or suppression of information. [par 129]

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

According to the mandate, OSCE Representative on Freedom of the Media assists the OSCE participating States in their continuing commitment to the furthering of free, independent and pluralistic media including inter alia by providing legal reviews of draft and existing laws.

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

TABLE OF CONTENTS

I. INTRODUCTION

1. On 9 May 2025, the Permanent Representative of Mongolia to the OSCE sent to the OSCE Representative on Freedom of the Media (hereinafter "RFoM") a request for a legal review of the draft Law of Mongolia on Freedom of Media (hereinafter "the Draft Law"). Beyond the Draft Law, amendments to other pieces of legislation are also considered, including to the Law on Violations, the Law on Prevention of Crimes and Violations,[1] the Law on the Investigation and Resolution of Violations, the Law on Criminal Procedure, the Law on the Recognition of the Law as Repealed and to the Law on Procurement of Goods, Works and Services with State and Local Funds (together referred to as "Draft Amendments").
2. On 30 May 2025, as per an established practice, RFoM invited the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") to prepare a Joint Opinion drawing on both institutions' expertise and respective mandates.
3. On 3 June 2025, ODIHR responded to this invitation, confirming its readiness to prepare a joint legal opinion on the compliance of the Draft Law with international human rights standards and OSCE human dimension commitments.
4. On 16 June 2025, the RFoM responded to the Permanent Representative of Mongolia to the OSCE confirming readiness to prepare a legal analysis of the Draft Law, jointly with ODIHR.
5. This Joint Opinion was prepared in response to the above request. RFoM and ODIHR conducted this assessment within their respective mandates to assist OSCE participating States in the implementation of their OSCE human dimension commitments.[2]

II. SCOPE OF THE JOINT OPINION

6. The scope of this Joint Opinion covers only the Draft Law 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 freedom of the media in Mongolia.

1 Available at: <CRIME AND CRIME PREVENTION>. The draft amendments to the Law would repeal the wording ""not to harm the honor, dignity, rights, or legitimate interests of others, and to respect the honor and dignity of others when expressing one's own opinions" from Article 3.1.1. which currently provides that a citizen is responsible for the prevention of crimes and violations as follows: "*31.1.1.* ***not to harm the dignity, honor, rights and legitimate interests of others, to respect the honour and dignity of others when expressing one's opinions****, not to provoke others to commit crimes or violations, not to commit acts that distort public safety and public order*"; as well as Articles 32.3 (procedure for the immediate publication and access of urgent information), 32.4 (content-based prescriptions aiming to reflect/implement means of combating and preventing crime), 32.5 (proportion requirements in terms of content aim at combating and preventing crimes), 32.6 (prohibition of information that promotes violence, murder, immorality, or crime, that details the methods and means of committing crimes, that depicts in detail the methods and tools used to conceal crimes, that portrays crimes or offenses as a means of increasing profits and revenues, and that may motivate them to commit crimes or offenses), 32.11 (determination of the procedure for free of charge communication of information on disappearance or discovery of a child) of the Law on Prevention of Crimes and Violations.

2 See, in particular, Copenhagen 1997 (Annex 1: Permanent Council Decision No. 193, Mandate of the OSCE Representative on Freedom of the Media). See also the CSCE/OSCE, 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; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (Moscow Document), CSCE/OSCE, 3 October, 1991, paras. 9.1 and 26; and CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era (Budapest Document), CSCE/OSCE, 21 December 1994, Chapter VIII, para. 36. See also OSCE Ministerial Council Decision No. 3/18, "Safety of Journalists", 12 December 2018, p. 3, which calls upon OSCE participating States to *"[b]ring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference (…).*"

7. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Law. 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, RFoM and ODIHR 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. 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 the broader national institutional and legal framework, as well as country context and political culture.

8. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[3] (hereinafter "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.

9. This Joint Opinion is based on an unofficial English translation of the Draft Law provided by the Permanent Representative of Mongolia to the OSCE, which is attached to this document as an Annex. Errors from translation may result. Should the Joint Opinion be translated in another language, the English version shall prevail.

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

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

11. 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 historically 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 freedom of expression and access to information, it should also be balanced with the protection of

3 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Monoglia deposited its instrument of ratification of this Convention on 20 July 1981.

4 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (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.

individuals' reputation and legitimate public interests as stipulated by relevant international human rights treaties.

12. 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 International Covenant on Civil and Political Rights (ICCPR)[7] provides that *"everyone shall have the right to hold opinions without interference"* and that *"everyone shall have the right to freedom of expression; this 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."* Article 19 of the ICCPR establishes the principle of medium neutrality by noting that these rights can be exercised regardless of the medium used. 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. In General Comment No. 34 on Article 19 of the ICCPR, the UN Human Rights Committee further underlines the essential role of a free, uncensored and unhindered press or other media as a cornerstone of a democratic society, also elaborating recommendations pertaining to legislative and administrative frameworks for the regulation of the mass media.[8] 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)[9] (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.[10] 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.

13. While Mongolia is not a Member State of the Council of Europe (CoE), Article 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR),[11] the case law of the European Court of Human Rights (ECtHR) in the field of freedom of expression and freedom of the media, and other CoE instruments, as well as related documents such as opinions of the European Commission for Democracy through Law of the CoE (Venice Commission) may nevertheless be relevant, persuasive and useful

---

6 See the Universal Declaration of Human Rights (UDHR), United Nations, General Assembly resolution 217 A. adopted 10 December 1948, Article 19.

7 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Mongolia ratified the Covenant on 18 November 1974.

8 UN Human Rights Committee, General Comment No. 34 "on Article 19 Freedoms of Opinion and Expression of the ICCPR", CCPR/C/GC/34, 12 September 2011, in particular paras. 13-18 and 39-42.

9 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.

10 See UN Human Rights Committee, General Comment No. 34 "on Article 19 Freedoms of Opinion and Expression of the ICCPR", 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., ODIHR, Guidelines on Democratic Lawmaking for Better Laws, ODIHR, 16 January 2024, para. 12 and Principle 16; and Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, 18 March 2016, para. 58. In addition, see, for the purpose of comparison and example of good regional practice, European Court of Human Rights (ECtHR), *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*."

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

from a comparative perspective.[12] 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,[13] Recommendation on Gender Equality and Media[14] and Recommendation on Principles for Media and Communication Governance.[15] Similarly, while Mongolia is not a member of the European Union, references are made to relevant EU regulations for illustrative and comparative purposes.

14. 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 of 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 reiterated 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]

15. In its Decision 3/18, adopted on 7 December 2018, the OSCE Ministerial Council called upon the 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]

16. 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.[20] 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

12 See documents available at <https://www.coe.int/en/web/freedom-expression/media>.
13 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.
14 See, as an example of good regional practice, CoE Recommendation CM/Rec(2013)1, "Recommendation of the Committee of Ministers to member States on gender equality and media", Council of Europe, Committee of Ministers, adopted on 10 July 2013.
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.
20 See, Copenhagen 1997 (Annex 1: Permanent Council Decision No. 193, Mandate of the OSCE Representative on Freedom of the Media).

freedom of the media.[21] Importantly, the 2023 Declaration on Media Freedom and Democracy outlines the broader legal and policy framework necessary to ensure that media can perform their crucial watchdog function in a democratic society.[22] 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),[23] Safety of Journalists Guidebook (3rd ed., 2020),[24] Resource Guide on the Safety of Female Journalists Online (2020),[25] Guidelines for monitoring online violence against female journalists (2023),[26] and Policy Manual "Spotlight on Artificial Intelligence and Freedom of Expression" (2022)[27] are also of relevance for the present Joint Opinion.

2. BACKGROUND

17. Article 16 of the Constitution of Mongolia guarantees, among others, the freedom of thought, opinion, expression, speech and press. A number of pieces of legislation form the existing legal framework for media regulation, including the Law on Communications, the Law on Public Radio and Television, the Law on Advertising, the Law on Copyright and the Law on Freedom of the Press.

18. The proposed reform has been presented as an effort to promote a more diverse and independent media environment, enhance the quality of journalism, and address mounting concerns over the deterioration of media freedom in the country.[28] The Draft Law was submitted to the Parliament of Mongolia in January 2025.

19. With the Draft Law, the legal drafters have made a commendable effort to modernize the national media regulations and align with international standards and emerging practices. Key provisions of the Draft Law include the legal definition and scope of journalistic activity, the establishment and operation of media organizations, and the protection of editorial independence. The Draft Law introduces transparency requirements for media ownership, defines journalists' rights –particularly the right to protect confidential sources – and outlines core ethical and professional principles for media actors. The Draft Law further distinguishes between types of media organizations, including public, commercial, and "joint media organizations", which are non-profit legal entities established at the local level by groups of citizens. It also affirms that any international treaties ratified by Mongolia take precedence over conflicting domestic provisions, reinforcing its alignment with international obligations (Article 2.2.).

20. Another welcome feature is the creation of a self-regulatory framework for the media sector, including a body tasked with developing ethical standards and reviewing complaints about journalistic content. The Draft Law also addresses state-media relations, explicitly prohibiting censorship, coercion, and unlawful state interference in editorial content.

21 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").
22 See Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2 May 2023.
23 See Special Report on Legal Harassment and Abuse of the Judicial System Against the Media, OSCE-RFoM, 23 November 2021.
24 See Safety of Journalists Guidebook, OSCE/RFoM, 3rd edition, 10 November 2020.
25 See Safety of Female Journalists Online Resource Guide, OSCE/RFoM, 30 October 2020.
26 See Guidelines for monitoring online violence against female journalists, OSCE/RFoM, 3 October 2023.
27 See Spotlight on Artificial Intelligence and Freedom of Expression: A Policy Manual, OSCE/RFoM, 20 January 2022.
28 These concerns have been reflected in Mongolia's significant decline in international media freedom rankings—dropping 36 places since 2020 in the Reporters Without Borders (RSF) World Press Freedom Index and standing at 109th out of 180 countries as of 2024. See also ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 18.

3. General Observations and Scope of the Draft Law

21. Article 3 of the Draft Law defines its scope as encompassing the regulation of "*relations related to the independent and transparent publication of information through media outlets in the interest of public rights and interests based on journalistic activities*" (3.1) as well as *"[t]he works published in the media by individuals engaged in independent journalistic activities, as well as related relations"* (3.2).

22. While it is essential that the legal framework ensures the protection of journalists and freedom of media operations, as far as journalistic *duties* may be concerned, it is generally recommended that they be subject to self-regulation and/or contractual relations between journalists and media outlets rather than legal regulation (with the exception of general legal provisions regulating serious forms or hate speech and incitement to violence). Attempting at regulating a broad spectrum of duties or professional standards of journalists may also turn out to be ineffective in practice since it is unlikely that the state apparatus will be able to secure sufficient capacity to monitor and ensure compliance. In this respect, it is important to underline that the OSCE participating States encourage "*the adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms for ensuring increased professionalism, accuracy and adherence to ethical standards among journalists*."[29]

23. The Draft Law appears to be largely silent on the role and regulation of online media and digital intermediaries. Article 4 (1) (3) of the Draft Law includes "editorial websites" under the definition of media outlets. This terminology may be too narrow to reflect the realities of the contemporary media landscape. It is unclear whether this definition extends to news and journalistic content disseminated through search engines, social media platforms, video-sharing sites, podcasts, blogs, vlogs, or via algorithm-driven content distribution systems, all of which play a significant and growing role in public communication and information access.

24. This raises important questions about how key issues – such as content moderation, disinformation, transparency of algorithms, and access to diverse sources of online news – will be addressed within the national media law framework. Moreover, there is no clear indication of whether online-only media outlets will be subject to the same obligations as traditional print or broadcast media, including in terms of registration, transparency, editorial independence, and ethical standards.

25. In this respect, it is advisable to adopt a graduated and differentiated approach to media governance depending on the type of media to be regulated. In general, a requirement to register and obtain a license would be justified when the distributor aims at using scarce infrastructure technologies (such as terrestrial frequencies)[30] but not vis-à-vis other cases (e.g., cable and satellite) where in principle, according to good practices in the OSCE, European Union and the Council of Europe, a mere notification to the competent telecommunications authority would suffice.[31] In this respect, the CoE Recommendation CM/REC(2011)7 may offer useful guidance as it provides indicators to capture the multiform reality of the media industry and develop a regulatory framework with different levels of duties and responsibilities, proportionate to the size and power of the different outlets.[32]

29 See e.g., OSCE, *MC Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding*; and *MC Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding*.

30 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 39.

31 See e.g., OSCE RFoM, *Legal Analysis of the Law of the Republic of Armenia "On Audiovisual Media"* (Adopted on 16 July 2020), p. 4.

32 See CoE Committee of Ministers, Recommendation CM/REC(2011)7 on a new notion of media, 21 September 2011, and CoE Committee of Ministers, Recommendation CM/Rec(2022)11 on principles for media and communication governance (adopted by the Committee of Ministers on 6 April 2022 at the 1431st meeting of the Ministers' Deputies).

26. **In light of the above, it may be worth considering supplementing the Draft Law to more clearly encompass the full spectrum of digital journalism and media distribution to ensure it remains relevant, future-proof, and aligned with evolving international norms and practices.**

27. The UN Human Rights Council has affirmed "*that the same rights […] offline must also be protected online, in particular freedom of expression*",[33] hence online content is subject to the same human rights regime as offline content. As such, all forms of audio-visual material, as well as electronic and Internet-based modes of expression are protected by the right to freedom of expression.[34] Any regulation responding to the exigencies of contemporary media realities need to continuously guarantee freedom of expression and protect it at the highest possible level with only narrowly defined, necessary and proportionate restrictions permitted.

28. **Should the scope of the Draft Law be expanded to cover digital journalism and online media, it should specify that it aims to only regulate *professional* mass media outlets and those performing journalistic function, by excluding from its scope the likes of non-professional publications, personal blogs and personal social media pages.**

29. Moreover, as a number of amendments to other pieces of legislation are also being considered as part of the reform of the legal framework governing the media (see para. 1 supra), the legal drafters could consider supplementing the Draft Amendments by addressing certain concerns raised regarding existing Criminal Code[35] and other legal provisions that may unduly impact the exercise of freedom of expression, and the work of journalists and media in Mongolia.

30. It is noted that the draft amendments to the Law on Prevention of Crimes and Violations would repeal the part of clause 31.1.1. which stipulates "not to harm the honor, dignity, rights, or legitimate interests of others, and to respect the honor and dignity of others when expressing one's own opinions" from Article 31, which lists obligations with respect to the prevention of crimes and violations. It should be noted that violation of this law entails "*liability as provided for in the Criminal Code or the Violation Law*" (as per Article 47.2). While it is welcome in principle that such a broad wording would be repealed, other problematic provisions of the Criminal Code and other legislation dealing with defamation and libel would be retained.[36]

31. In this respect is noted that in its General Comment No. 34 on Article 19 of the ICCPR, the UN Human Rights Committee emphasizes that "*States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty*". In the OSCE Ministerial Council Decision No. 3/18 on the Safety of Journalists, the OSCE Ministerial Council called upon the OSCE participating States to *"[e]nsure that defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with*

[33] See UN Human Rights Council, 2012 Resolution 20/8 on the Promotion, Protection and Enjoyment of Human Rights on the Internet, A/HRC/RES/20/8, 16 July 2012, para. 1, which states that the "same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice." See also UN Human Rights Council Resolution on the promotion, protection and enjoyment of human rights on the Internet, A/HRC/47/L.22, para. 1.

[34] See the UN Human Rights Committee, General Comment No. 34 on Article 19 of the ICCPR, CCPR/C/GC/34, para. 12.

[35] Available at: <CRIMINAL LAW>, 2015 as last amended in 2025 (in Mongolian).

[36] See for example Article 13.14 of the Criminal Code which states: "In case of dissemination of obviously false information that insults person's honour, dignity and business reputation of the legal entity distributed through social media, a fine equal from 450 to 1,350 units shall be imposed or shall be sentenced to 240 to 720 hours of community service, or right to travel shall be restricted for a period of one to three months. See also ODIHR, Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections, 28 June 2024, p. 18.

their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with participating States' obligations under international human rights law."[37]

32. It is noticeable that some provisions of the Draft Law (such as, for example, 6.1. or 6.2.) as well as its overall structure seem to replicate the approaches pertaining to the common law countries in this field. It remains to be seen if these approaches could be properly applied and implemented in a continental law state where powers of the judiciary with regard to norm-making are limited and reliance on written law and detailed legal regulations is predominant.

33. Finally, while the Draft Law makes important strides in protecting media freedom, it omits critical safeguards against Strategic Lawsuits Against Public Participation (SLAPPs) –a tool of intimidation used to silence journalists and critical voices in a growing number of jurisdictions across the world, which is a worrying trend. SLAPPs can drain resources, chill investigative reporting, and erode democratic oversight. As a comparison, some regional standards, such as the Council of Europe Recommendation CM/Rec(2024)2[38] and the European Union (EU) 2024 Anti-SLAPP Directive,[39] call upon states to pay specific attention to SLAPPs in the context of their reviews of relevant domestic laws, policies and practices. This appears to be a relevant concern in the context of Mongolia in light of the findings and conclusions of the ODIHR Final Election Observation Mission Report for the 2024 parliamentary elections.[40] In this respect, a number of effective legal and procedural safeguards against SLAPPs could be considered, including the introduction of adequate and appropriate legal provisions for early dismissal of such claims,[41] security for procedural costs and damages to be covered by the claimant,[42] restitution of all defendant's legal costs in case of a SLAPP[43] as well as compensation damages, and judicial awareness to prevent abuse of defamation or civil suits against media actors, among others. **The Draft Law and Amendments, in particular those relating to the Law on Criminal Procedure, should be supplemented to reflect such safeguards to effectively protect the media and journalists from SLAPPs.**

RECOMMENDATION A

1. Journalistic duties should generally be subject to self-regulation and/or general contractual relations rather than specific legal regulation aimed at the media sector, as states should encourage the adoption of voluntary professional standards and media self-regulation (with the exception of general legal provisions regulating serious forms or hate speech, propaganda for war or incitement to violence).

2. To supplement the Draft Law to encompass the full spectrum of digital journalism and media distribution to ensure it remains relevant, future-proof, and aligned with evolving international norms and practice.

37 See OSCE Ministerial Council Decision No. 3/18, "Safety of Journalists", 12 December 2018, p. 3.
38 See as a comparison, Council of Europe, *Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)* (Adopted by the Committee of Ministers on 5 April 2024 at the 1494th meeting of the Ministers' Deputies).
39 Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').
40 See ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 18.
41 See e.g., Council of Europe, *Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)*, paras. 25-36.
42 See e.g., Council of Europe, *Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)*, paras. 37.
43 See e.g., Council of Europe, *Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)*, para. 38.

3. To include in the Draft Amendments legal and procedural safeguards against Strategic Lawsuits Against Public Participation, such as early dismissal provisions, security for costs, reimbursement of legal costs for the defendant, and judicial awareness of defamation abuse.

4. DEFINITIONS

4.1. Journalists and Journalistic Activity

34. Article 4.1.1 of the Draft Law defines "journalistic activity" by reference to the "publishing, broadcasting, and distribution" of information through media outlets. These inclusions are positive, as they recognise a variety of key activities such as searching, investigating, and obtaining information. A potential oversight is the omission of reference to opinion pieces or commentary. This omission risks narrowing the scope of protected media freedom under national law. As a comparison, the Council of Europe has underlined that journalism includes the collection and dissemination of information intended for public use, encompassing "news, commentary, educational material, and entertainment".[44] Similarly, the Court of Justice of the European Union (hereinafter "CJEU") has interpreted "journalistic activity" to include the dissemination of public information, opinions, or ideas, irrespective of the transmission medium.[45] Absence of an opinion-based expression in the definition does not fully correspond to the international standards on protection of journalists, which require legal definitions to be sufficiently broad and inclusive to safeguard all forms of protected expression. It is recommended to the legal drafters **to broaden the definition of "journalistic activity" in Article 4.1.1 of the Draft Law**.

35. The Draft Law defines a "journalist" as a person who carries out journalistic activities in a professional manner, whether employed by a media organization or working independently (Article 4.1.4 of the Draft Law). The inclusion of independent and freelance journalists alongside those formally employed is a positive feature, as it reflects the varied professional settings in which journalism is practiced. At the same time, the definition of journalism should remain sufficiently broad to also encompass individuals who perform journalistic function without formal affiliation to a media organization,[46] provided they adhere to basic deontological and ethical standards in the course of their activities. It is also important that, for the purpose of protection, the definition of journalists could be extended all media workers and support staff, as well as community media workers and possibly, online actors like influencers if they perform journalistic function and adhere to the rules of professional journalistic ethics.[47]

---

44 See e.g., CoE Technical Paper, David Banisar, *'Defining Journalism: International Standards'* DCFE/TP/SFEM-UA/11-2023, 15 November 2023).

45 CJEU, *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy* [GC], Case C-73/07, 2008 pp. 56; 61.

46 According to the UN Human Rights Committee, General Comment No. 34 (2011) on Article 19 of the ICCPR, "*journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere*", thereby emphasizing that the right to freedom of expression applies regardless of formal affiliation with a media outlet; see the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, 2011, para. 44.

47 UN Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression further elaborated the standard in his 2012 Report to the Human Rights Council, A/HRC/20/17, para. 4, which states: *"[j]ournalists are individuals who observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole*", thereby including all media workers and support staff, as well as community media workers and so-called "citizen journalists" when they momentarily play that role within the definition of "journalists", also emphasizing that this also includes individuals using online media who are operating as journalists. As a comparison, the CoE Recommendation CM/Rec(2011)7 on a new notion of media, recognizes that "media-like" actors,

36. In today's hybrid media ecosystem, certain influencers who systematically produce content that informs, comments on, or critiques social, political, or cultural developments – and who do so in accordance with basic ethical or deontological standards – may be understood as performing a journalistic function, even in the absence of formal training or affiliation with traditional media. Although there is no uniform legal definition of "influencers" regionally or globally nor uniform practices in terms of regulation,[48] if they carry out journalistic functions, they should also be covered from the same legal regime.

37. From a comparative perspective, the ECtHR does not offer a fixed definition of journalism, but instead emphasises that many actors contribute to public debate and may fulfil the essential role of a "public watchdog".[49] This includes not only members of the press, but also non-governmental organizations, academic researchers,[50] authors, bloggers,[51] social media users, particularly given the role of the Internet in expanding public access to news and information, and other non-professional actors who perform public watchdog functions. These actors are entitled to a high level of protection under Article 10 of the ECHR. The ECtHR jurisprudence demonstrates a progressive and inclusive interpretation of the right to freedom of expression, expanding its protection to any individual or entity acting in good faith and contributing to democratic discourse by providing accurate and reliable information in accordance with the ethics of journalism, regardless of institutional status.[52].

38. In light of the foregoing and to ensure inclusive protection of media freedom, the definition of "journalist" in Article 4.1.4 of the Draft Law could be further strengthened by adopting a functional approach to journalism, explicitly acknowledging that journalistic activities may also be carried out by individuals who do not have a formal relationship with a media organization, including independent content creators, provided they engage in journalistic activities. Indeed, what matters is not the professional status or institutional affiliation of the individual, but rather the nature of the activity and its contribution to the public interest.[53] Amending the definition of 'journalist' to reflect these developments would ensure alignment with international approaches and safeguard those engaged in journalistic activity, regardless of the professional or personal capacity, as well as the format or platform through which they operate.

4.2. Media Outlet

39. Article 4.1.3 of the Draft Law defines a "media outlet" as a medium such as a newspaper, journal, radio, television, or editorial website used by media organizations to distribute information to the public or to specific groups. The reference to the dissemination of

including citizen journalists and bloggers, may perform key public watchdog roles and should benefit from the same protections where they carry out journalistic functions in good faith and in accordance with ethical standards; see CoE Committee of Ministers, Recommendation CM/REC(2011)7 on a new notion of media, 21 September 2011, paras. 41 and 71.

48 For instance, at the EU-level, while there is currently no uniform EU-level legal definition of influencers, the *Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive, AVMSD) in view of changing market realities* opens the door for their inclusion within national regulatory frameworks. Under Article 1(1)(a) AVMSD, influencers can be classified as audiovisual media service (AVMS) providers if they provide content in a professional and organized manner with editorial responsibility. Several EU Member States – e.g., France and Spain through legislation, and 19 others through soft-law instruments such as advertising codes or guidelines – have already developed definitions or criteria for influencers, suggesting a growing recognition of their public communication role (see e.g., European Audiovisual Observatory, National rules applicable to influencers, Strasbourg, 2024).

49 See e.g., ECtHR, *Animal Defenders International v. The United Kingdom [GC]*, no. 48876/08, 22 April 2013, para. 103; ECtHR, *Magyar Helsinki Bizottsag v. Hungary [GC]*, no. 18030/11, 8 November 2016, para. 166; ECtHR, *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, no. 18597/13, 9 January 2018.

50 See e.g., ECtHR, *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, 1 December 2015.

51 See e.g., ECtHR, *Jezior v. Poland*, no. 31955/11, 4 June 2020.

52 See e.g., ECtHR, *Magyar Helsinki Bizottsag v. Hungary [GC]*, no. 18030/11, 8 November 2016, para. 159.

53 UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, 'Reinforcing Media Freedom and the Safety of Journalists in the Digital Age' *UNHRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (20 April 2022), UN Doc A/HRC/50/29, paras. 15-16.

information to "specific groups" can raise questions as it appears vague and may have various interpretations. It is unclear what constitutes a "specific group", and whether this might extend the Draft Law's scope to certain platforms or material with extremely limited circulation, similar to a company's internal news-letter, for example.

40. Developments in information and communication technologies, particularly through the Internet, have enabled greater user participation in the creation and dissemination of content. However, they have also contributed to blurring of boundaries between public and private communication.[54] This shift in the media ecosystem requires careful regulatory consideration to avoid capturing private, individual communication within the scope of media regulation. Without clarification, the provision risks overreach, potentially encompassing communications that are not intended for public dissemination. **It is therefore recommended that the term "specific groups" be clearly defined to refer only to identifiable segments of the public that a media organization deliberately targets in its journalistic activity, and not to closed or private communication channels.**

4.3. Editorial Office of Media Organization

41. Article 4.1.5. of the Draft Law provides a definition of "editorial office" as a unit or individual responsible for a range of activities including "'*defining, creating, and verifying*" the content disseminated to the public. While this definition appears largely uncontroversial, its reference to "verifying" content does not encompass all aspects of the traditional understanding of editorial control.

42. According to the CoE Recommendation CM/Rec(2011)7 on a new notion of media, editorial control involves a range of practices that extend beyond formal verification.[55] Editorial processes typically consist of established routines and conventions such as commissioning, selecting, processing, or validating content, rather than a narrow focus on fact-checking.[56] These processes may include both ex-ante (pre-publication) and ex-post (post-publication) moderation, and may be carried out by editorial boards, designated staff, or automated systems.[57] Therefore, **any definition of "editorial office" should reflect this broader understanding and Article 4.1.5. of the Draft Law should be amended for that purpose**.

4.3. Misinformation and Disinformation

43. The inclusion of definitions for both "misinformation"[58] and "disinformation"[59] represents a positive step toward addressing the harms associated with the spread of false information.[60] This applies to both intentional and unintentional dissemination, which can

54 See e.g., CoE Committee of Ministers, Recommendation CM/REC(2011)7 on a new notion of media, 21 September 2011,, paras. 5-6.
55 CoE Committee of Ministers, Recommendation CM/REC(2011)7 on a new notion of media, 21 September 2011, paras. 30-35
56 *Ibid.*, para. 32.
57 *Ibid*., para. 32.
58 "Misinformation" is defined in Article 4.1.9 of the Draft Law as "*inaccurate news, information, or data that was disseminated without the intent to harm an individual's mental or physical well-being or the operations of a legal entity and was either unknowingly incorrect or could not have been known to be incorrect*".
59 "Disinformation" is defined in Article 4.1.10 of the Draft Law as "*deliberately spreading false news, information, or evidence that is baseless and intended to harm a person, legal entity, or country*".
60 The CoE provides for the following definitions: Mis-information; Information that is false, but not created with the intention of causing harm; Dis-information: Information that is false and deliberately created to harm a person, social group, organization or country.; Mal-information: Information that is based on reality, used to inflict harm on a person, organization or country. see e.g., CoE Council of Europe's 2017 *Report Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, p. 20. See also CoE Committee of Ministers, Recommendation CM/Rec(2022)12 on electoral communication and media coverage of election campaigns, 6 April 2022, para. 7, which defines "disinformation" as "*verifiably false, inaccurate or misleading information deliberately created and disseminated to cause harm or pursue economic or political gain by deceiving the public*". See further: UNESCO, *Handbook for Journalism Education and Training "Journalism, Fake News and Disinformation"* (2018), p. 7. See also UNDP, which defines "disinformation" as "Information that is false and deliberately created to harm a person, social group, organization or country",

compromise the integrity of the information ecosystem and undermine democratic values.[61] In case such types of information are disseminated to the public by a media organization or a journalist, according to Article 8.5 of the Draft Law, the person whose rights may have been violated may file a complaint with the editorial office or the media's self-regulatory body.

44. At the outset, it is important to underline that state responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression.[62] Not all inaccurate information is harmful, and only certain harms – such as those that in fact implicate public health, electoral processes, hate speech or national security – may warrant state intervention.[63] 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.[64]

45. 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. 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 other actors, 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 and legitimate 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.[65] At the same time, imposition of a general obligation for all media organizations and journalists to only publish accurate/truthful information would be disproportionate, not feasible 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.[66] Further, a graduated and differentiated approach towards the legal obligations applicable in terms of checking facts and the accuracy of information should be considered, depending on the type of media and their level of institutional capacity, access to resources and outreach. This, in particular, should be taken into account while deciding on sanctions since while the general expectation to verify information is applicable to all media actors, their technical ability and resources available to perform such verification can vary significantly depending on their respective institutional capacity. This is in

"misinformation" as "Information that is false, but not created with the intention of causing harm" and "malinformation" as "Information that is based on real facts, but manipulated to inflict harm on a person, organization or country", see <UNDP - RISE ABOVE: Countering misinformation and disinformation in the crisis setting | United Nations Development Programme>. .

61 CoE Committee of Ministers, *Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age*.

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

63 *Ibid*, para. 42.

64 UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, 2011, para. 49.

65 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.

66 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.

addition to the adoption of self-regulatory rules on verifying accuracy of information that is published.

46. Certain states have adopted alternative means of countering disinformation by focusing on enhancing transparency of online platforms, conducting robust public information campaigns and promoting wide-ranging access to information, supporting free and independent media and dialogue with communities and building digital, media and information literacy.[67] 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.[68] 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, present uncertain information in the conditional tense, and offer different perspectives when presenting contentious information.

47. It is noted that both definitions of "misinformation" and "disinformation" in the Draft Law omit a key element included, for instance, in the Council of Europe's definition: the requirement that the information be "verifiably false, inaccurate or misleading".[69] The absence of this qualifier renders the definitions overly broad and risks encompassing content that, while not fully accurate or contested, does not meet the threshold of demonstrable falsehood. This may have a chilling effect on freedom of expression, particularly in the cases where information is subject to legitimate debate or is still developing. **To ensure greater clarity and prevent the overreach of such regulatory measures, it is recommended that both definitions be revised to include a requirement that the information in question be "verifiably false, inaccurate or misleading". Additionally, the policy- and lawmakers should seek to address the problem of disinformation by also using alternative (non-legal) means of countering disinformation.**

48. It is further **recommended to complement the existing definitions by adding the concept of "malinformation".[70]** This would acknowledge that not all harmful information is false and that truthful content can be weaponized, particularly against marginalized individuals or groups. It also helps differentiate between accidental, intentional, and contextually manipulative information harms. Moreover, it enables more precise regulatory, policy, and educational responses to various forms of information manipulation.

RECOMMENDATION B

1. To adopt a functional approach to journalism and to ensure that the definition of "journalist" in Article 4.1.4 includes not only professionals but also individuals performing journalistic function independently, such as freelance journalists,

67 See UN Secretary General, Report on Countering disinformation for the promotion and protection of human rights and fundamental freedoms, 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.

68 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.

69 CoE Committee of Ministers, Recommendation CM/Rec(2022)12 on electoral communication and media coverage of election campaigns, 6 April 2022, para. 7; Recommendation CM/Rec(2022)11 on principles for media and communication governance, adopted by the Committee of Ministers on 6 April 2022, para. 4; *CoE Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights-compliant manner* (2024), see Preamble, para. 3.

70 As outlined in the Council of Europe's 2017 *Report Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, p. 20, "malinformation" "*involves the use of genuine, verifiable information shared with the intent to cause harm, often by moving it from the private to the public sphere, or by distorting its context (e.g., doxing, selective leaks, or context-stripped content)*."

support staff, and those operating through online platforms, like influencers, provided they engage in journalistic activities and perform journalistic function.

2. To amend the definition of "editorial office" in Article 4.1.5 to reflect broader editorial functions beyond fact-checking, in line with established media practices and the CoE Recommendation CM/Rec(2011)7.

3. To ensure greater clarity and prevent the overreach of regulatory measures, it is recommended that the definitions of misinformation and disinformation be revised to include a requirement that the information in question be "verifiably false, inaccurate or misleading". Additionally, the policy- and lawmakers should seek to address the problem of disinformation by also using alternative (non-legal) means of countering disinformation.

5. Guarantee of Media Independence and Sovereignty – Institutional Frameworks

5.1. Media Founding and Registration

49. Article 7 of the Draft Law governs the establishment and registration of a media organization. Article 7.1. provides that "*[e]very citizen of Mongolia, regardless of their ethnicity, language, culture, skin color, age, gender, social background, wealth, occupation, position, religion, beliefs, education, sexual orientation, or criminal history, has the right to freely express their opinions through media outlets and to establish and operate a media organization in accordance with the procedures prescribed by law*." Article 7.2. notes that the establishment and registration of media organizations are regulated by the relevant laws.

50. Whilst the Draft Law does not explicitly rule out the establishment of a media outlet by a foreign national or entity or stateless person, by expressly referring to "citizen of Mongolia", Article 7.1. seems to imply such an exclusion. Although the limitation on foreign ownership of mass media outlets exists in a number of OSCE participating States, these limitations are normally directed at broadcasting mass media.[71] A broad exclusion of all non-nationals and stateless persons from founding or owning any type of mass media outlet could be regarded as discriminatory and could unduly hinder the right to freedom of expression. **It is recommended to re-assess the restrictions concerning media ownership and narrow the scope of the restriction for non-nationals to what is considered strictly justified and proportionate.**

51. As for the reference to other laws for the establishment and registration of media organizations, it is important to note that normally, an obligation for a media 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.[72]

71 Legislation on foreign media ownership in the 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 the 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, European Commission, SEC(2007) 32, Commission Staff Working Document, *Media pluralism in the Member States of the European Union*.

72 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 39.

52. As noted above, it is important to adopt a graduated and differentiated approach to media governance depending on the type of media to be regulated, distinguishing between the print, broadcast and the online media. Normally, the requirement to obtain a license is acceptable where it concerns the use of scarce infrastructure technologies (such as terrestrial frequencies) while for others (e.g., cable and satellite media), a system of notification to the competent authority would suffice.[73] A similar notification system or voluntary registration could apply to press and online media. As also noted above, online media self-regulation and the option for the online media to opt-in and to choose to belong to such self-regulatory regime is generally a good way to prevent unnecessary involvement of public authorities, while allowing media to fulfil their role as democracy watchdogs.[74]

53. Licensing or registration is not necessarily problematic in itself providing that the procedure is neither unduly cumbersome nor subject to arbitrary interpretation. In this respect, as underlined by the UN Human Rights Committee in its General Comment No. 34, 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, clear, transparent, non-discriminatory and otherwise compliant with international human rights standards.[75]

54. Although registration can offer media certain rights and privileges (including for online media), legal provisions should be clear, precise and foreseeable to avoid the risk of discretionary or arbitrary application or of possible abuse of these rules to suppress dissenting voices and otherwise unduly limit freedom of expression.[76] The requirements/conditions of registration should also be reasonable and objective, transparent and non-discriminatory.[77] Furthermore, public broadcasting media or state media should not be put in a more favourable position compared with private outlets in this regard.

55. Therefore, **any registration requirements should narrow the types of media outlets that require registration, preferably excluding the press and online media from the scope of compulsory registration, while ensuring that the registration procedure is as simple as possible, clear and foreseeable and only requires strictly necessary and relevant information/documents.**

5.2. Prohibition of Content Control

56. Article 6.3 of the Draft Law provides that the State shall not establish any organization or position that exercises content control over the information published or broadcast by media outlets, and prohibits the funding of "such activities", understood as referring to content-control. This provision appears to prohibit the establishment or funding of a

73 See e.g., OSCE RFoM, *Legal Analysis of the Law of the Republic of Armenia "On Audiovisual Media"* (Adopted on 16 July 2020), p. 4. 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; see e.g., *OSCE media freedom representative expresses concern regarding new registration system and threat of potential closure of online portals in Albania*, 18 October 2018.

74 See e.g., OSCE RFoM, *The Online Media Self-Regulation Guidebook* (2013), pp. 77-78; see also e.g., *Ensuring Independent Regulation for Online/Citizen Media*, LSE Media Policy Project, 2014.

75 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 39. Examples from other OSCE participating States show that some countries have opted out of requiring registration for print media (see e.g., 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 (see the Media Law of the United Kingdom). 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 (see Article 50 of the *Law on Media of Ukraine).*

76 See *Ensuring Independent Regulation for Online/Citizen Media*, LSE Media Policy Project, 2014. See also ODIHR and OSCE RFoM Joint *Legal Analysis of the Draft Law on Mass Media of the Republic of Uzbekistan*, November 2020, Chapter 4.

77 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 39.

public body (or of a public office-holder) to exercise either ex-ante or ex-post control over media publications, to avoid 'censorship' (especially in the form of ex-ante control). Article 6.1 of the Draft Law prohibits adoption of laws or administrative acts that restrict the freedom of individuals to express their opinions, speak, publish, or freedom of media outlets.

57. **While the overall purpose of these provisions is undoubtedly commendable, it is advisable to further clarify them so that they do not unduly prevent legitimate state regulation where it is required by the international human rights law and applicable standards.** In particular, Article 6.1 should be understood and implemented without prejudice to state's obligations under Article 20 of the ICCPR to outlaw propaganda for war and serious forms of hate speech (e.g. any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence). In a similar vein, incitement to violence is not considered as protected speech and could be legitimately restricted in law and in practice. Article 6.3 of the Draft Law, in its turn, should not be understood as precluding the state from establishing an independent media regulatory authority or as an obstacle to effective functioning of media self-regulatory mechanism.

RECOMMENDATION C

To clarify Articles 6.1 and 6.3 to ensure that these do not unduly prevent legitimate state regulation where it is required by the international human rights law and applicable standards and in particular, by Article 20 ICCPR.

5.3. Financial Sustainability of the Media

58. In its 2024 Final Report on the last parliamentary elections in Mongolia, ODIHR noted "*the lack of economic sustainability of the media outlets and compromised professional and ethical standards, which have led to low public trust*".[78] In view of the global crisis of media viability, international recommendations and guidelines encourage state authorities to provide financial support to media outlets. In this regard, it can be recalled that the recent CoE Recommendation on promoting a favourable environment for quality journalism in the digital age indicates that "*ensuring the financial sustainability of quality journalism is fundamental to securing a favourable environment for freedom of expression, which States are required to guarantee in law and in practice*".[79] To this end, state authorities may consider a variety of support models,[80] including fiscal measures such as tax relief or direct support (including when specifically targeted towards particular types of journalistic practice of high public value or resource-intensive, with particular regard to investigative journalism).[81] In any case, it is essential that financial support is allocated exclusively "on viewpoint-neutral criteria".[82] Additional guidance can be found in the CoE Recommendation on media pluralism and transparency of media

78 See ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 18.
79 See CoE Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age (Adopted by the Committee of Ministers on 17 March 2022 at the 1429th meeting of the Ministers' Deputies), Principle 1.1.1.
80 *Ibid.*, 1.1.2.
81 *Ibid.*, 1.2.1-1.3.4.
82 *Ibid.*, 1.1.2.

ownership, which advises that states provide 'various forms of financial support such as advertising and subsidies'.[83]

59. **In light of the above, the legal drafters should consider supplementing the Draft Law or other pieces of legislation with mechanisms to ensure the financial sustainability of media outlets and journalists – with a view to promote media pluralism and quality journalism,** in addition to ensuring adequate funding of the independent regulatory body.

RECOMMENDATION D

To supplement the Draft Law or other pieces of legislation with mechanisms to ensure the financial sustainability of media outlets – with a view to promote media pluralism and quality journalism.

5.4. Public Broadcasting

60. Articles 6.8 and 6.9 of the Draft Law foresee the establishment of a media organization tasked with "*disseminating and promoting official information about Mongolia internationally*", operating under the President of Mongolia on a non-commercial basis. International human rights instruments do not prohibit states from establishing media outlets, including those with an international mandate. It is understood that this broadcaster would be established in parallel to the public Mongolian National Broadcaster (MNB), which is governed by the Law on Public Radio and Television, which foresees its editorial independence.

61. Many countries maintain public international broadcasters[84] aimed at global audiences. These can play a legitimate role in cultural diplomacy, public information, and fostering international dialogue, as long as fundamental safeguards are in place.

62. It is unclear what the ultimate purpose of such a media organization is, and the Draft Law does not appear to offer any guarantees of its independence. If the organization is intended to function as a public service broadcaster or similar media outlet, placing it under the direct responsibility of the President of Mongolia would contradict long-established principles regarding the independence of such media entities.[85] While this may be intended to ensure high-level coordination and strategic alignment, it could give rise to perceptions of direct political oversight, which in turn may pose challenges for editorial independence, a core element of credible and trustworthy public service media.[86] It can also impact public trust, both within Mongolia and among international audiences, particularly when content is designed to represent the country abroad. **To safeguard editorial independence and protect against political influence, it would be beneficial**

83 See CoE, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies).

84 See e.g., BBC World Service, Deutsche Welle, France 24, Voice of America.

85 See e.g., CoE, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, Article 2.9. As indicated in the Parliamentary Assembly of the Council of Europe (PACE) Resolution on indicators for media in a democracy, "*public service broadcasters must be protected against political interference in their daily management and their editorial work";* see PACE, *Resolution 1636 (2008)1 on Indicators for media in a democracy*, Principle 8.20. The practical implementation of such principle is outlined in greater detail in the CoE Recommendation on the guarantee of the independence of public service broadcasting, indicating that legal frameworks governing public service media should clearly stipulate their editorial independence and institutional autonomy, the sole responsibility for day-to-day operations of the organization on the boards of management and the competence of the supervisory bodies (see e.g., See e.g., CoE, Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of The Independence of Public Service Broadcasting (Adopted by the Committee of Ministers on 11 September 1996 at the 573rd meeting of the Ministers' Deputies), paras. II-III).

86 See e.g., CoE, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, Article 2.9.

to entrust oversight of such a media organization to a regulatory body that operates independently from the executive branch.

63. The current provisions do not specify whether content produced by the media organization will be clearly labelled as state-funded or government-affiliated. **Introducing clear transparency requirements – such as visibly identifying the media outlet as publicly funded** – would help international audiences better understand the nature of the information they receive and would be in line with regionally established standards, such as CoE recommendations and Article 6 of the European Media Freedom Act.[87]

64. To implement the principle of independence of public service media in practice, legal frameworks governing such media should clearly stipulate their editorial independence and institutional autonomy, including in terms of financial independence and sustainability, entrust the sole responsibility for day-to-day operations of the organization to the boards of management and outline the competence of the supervisory bodies.[88] While Article 6.9 of the Draft Law provides that the organization in question shall not engage in commercial activities, to guarantee its financial independence and sustainability, the legal framework should establish an appropriate, secure and transparent funding framework which guarantees the means necessary to accomplish its mission.[89]

65. Alongside the governance framework, a further key aspect of the public service media model is a clear mission and mandate, which should be reflected in the legislation/regulation specific to the remit of public service media.[90] The purpose indicated in the Draft Law – to provide official information about the country at the international level – does not appear, in and of itself, inherently incompatible with a public service media organization.[91] However, in doing so, the legal framework should provide greater safeguards concerning the public service broadcaster operating "*as an impartial and independent source of information, opinion and comment*"[92] instead of simply requiring it to disseminate and promote official information.

66. In light of the above, **the provisions governing such broadcasting service with international outreach should be amended and supplemented to provide a clearer and more effective governance framework for this entity to ensure its independence and impartiality, with specific indication of its accountability, independence, and**

87 *Ibid.* Article 2.8. of CoE Recommendation CM/Rec(2018)1. See also: Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act),

88 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 16, which requires States to guarantee the independence and editorial freedom of public media and to provide for sustainable funding. See also e.g., CoE, Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of The Independence of Public Service Broadcasting, 11 September 1996, paras. II-III; and CoE, *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, para. 9..

89 See e.g., *ibid.*, para. V CoE, Recommendation No. R (96) 10. The United Nations (UN) Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, the Organization of American States (OAS) Special, Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, *2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression,* (Principle C.i) affirms that "*States should (…) ensure the presence of independent, adequately funded public service broadcasters*".

90 See e.g., CoE, Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, para. 15, which requires that the public service remit and, within it, the "*vision and overall purpose of the organization*" are clearly defined. See also CoE, Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society (31 January 2007), Principle I.1, which assigns to state authorities the competence "*to define and assign a public service remit*" by including "*provisions in their legislation/regulations specific to the remit of public service media*."

91 See, for instance, as a comparison, the Royal Charter setting out the mission of the BBC, including among other purposes that the public service broadcaster ought to "*reflect the United Kingdom, its culture and values to the world: the BBC should provide high-quality news coverage to international audiences, [and its] international services should put the United Kingdom in a world context, aiding understanding of the United Kingdom as a whole, including its nations and regions where appropriate*"; Cm 9365 Broadcasting Royal Charter for the continuance of the British Broadcasting Corporation (BBC), presented to UK Parliament by the Secretary of State for Culture, Media and Sport by Command of Her Majesty – December 2016, para. 6(5),.

92 See e.g., CoE, Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, Principle I.12.

funding structure, as well as its remit and purpose. To this end, the legal drafters should consider whether to include a more detailed framework for this public service broadcasting with international outreach in the Draft Law or in the Law on Public Radio and Television, or to attribute the same mandate to the commercial sector, for instance through a licensing scheme.

67. **To strengthen the credibility and effectiveness of such a media organization, it may be advisable to explore governance models that guarantee editorial independence – for example, through an independent board, transparent appointments, or independence safeguards clearly set out in law.** Such an approach would align well with good practices outlined by UN human rights bodies,[93] the Council of Europe[94] or the OSCE,[95] and would support Mongolia's standing as a state committed to media freedom, pluralism and democratic values.

RECOMMENDATION E

1. To entrust oversight of a media organization to a regulatory body that operates independently from the executive branch in order to safeguard editorial independence and protect against political influence.

2. To amend and supplement the provisions governing broadcasting service with international outreach to provide a clearer and more effective governance framework for this entity to ensure its independence and impartiality, with specific indication of its accountability, independence, and funding structure, as well as its remit and purpose. To this end, the legal drafters should consider whether to include a more detailed framework for this public service broadcasting with international outreach in the Draft Law or in the Law on Public Radio and Television, or to attribute the same mandate to the commercial sector, for instance through a licensing scheme.

5.5. Self-Government Media

68. Article 6.10 of the Draft Law provides the possibility for state institutions, local self-governing bodies and other types of legal entities with state-owned or local-owned participation to operate media outlets though exclusively for purposes specified in Article 6.8 of the Draft Law – i.e., the dissemination and promotion of official information about Mongolia internationally. It is unclear whether the remit of such organizations is indeed to exclusively have an international scope, or rather a local level outreach. In any case, the same considerations as outlined above regarding the need to ensure the independence and impartiality of such organizations and to include a different governance framework and remit are also relevant here.

69. According to the Joint Declaration on Media Freedom and Democracy issued by the UN, OSCE, OAS, and ACHPR mandate holders on freedom of expression,[96] the media landscape encompasses a broad range of actors, including public, private, and community media. This categorization, however, does not extend to self-government (local authority) media, as such entities possess distinct channels for communicating with citizens – such as official bulletins, announcements, or public notice boards – which serve administrative

93 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, paras. 13 and 23.
94 See e.g., CoE Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, points 4.1 and 4.2.
95 See International Mandate-Holders on Freedom of Expression, *Joint Declaration on Media Freedom and Democracy* (2023).
96 International Mandate-Holders on Freedom of Expression, *Joint Declaration on Media Freedom and Democracy* (2023).

rather than journalistic functions. Accordingly, legal frameworks should clearly distinguish between independent media actors and institutional communication by public (national or local) authorities to avoid conflating informing about governance matters with editorial activity.

70. While the intention behind this provision – to limit the operation of state-run media to narrowly defined purposes – can help protect media independence, the current drafting leaves ambiguity regarding the status and function of state-owned or local-owned media. It is unclear how this provision would affect the existence and operations of local public-interest media, such as municipal information bulletins or community radio stations. Conversely, the lack of clearly defined purpose limitations for local self-government media raises the risk that such outlets may be used for political messaging or campaigning of a ruling political force under the guise of public communication.[97] It is not evident how these entities might lawfully and practically be involved in "promoting Mongolia internationally", which is the stated aim of Article 6.8. This raises further concerns about mission creep and possible instrumentalization of local media for centralized political narratives.

71. In several countries, local government-owned media have evolved into vehicles for political propaganda, especially during election periods or in politically polarized environments. Studies by organizations such as ODIHR[98] and Reporters Without Borders[99] have warned that municipal media often lack editorial independence, serve the ruling party's interests, and undermine local pluralism.

72. In ODIHR's Election Observation Mission Final Report on the 2024 Parliamentary Elections in Mongolia, it was noted that *"[t]he public Mongolian National Broadcaster (MNB), comprising five TV channels and three radio stations, enjoys relatively high popularity, partly due to its status as a traditional media source. Its funding largely relies on the state budget, which is decided and approved annually by the government and ruling majority, contrary to international commitments to public media's legal and financial independence*." According to the ODIHR Report, "…*many media outlets are politically affiliated, while numerous owners of other media do not consider media as their core business; rather, they use media as a tool for political leverage to protect their economic interests. Additionally, a contracts-based system is believed to be widely used among journalists, essentially involving payments for favourable editorial content.*" [100]

73. **To ensure compliance with international standards and to avoid the misuse of local media for political ends, it is recommended to clarify and narrowly define the permissible functions of local self-government media or other types of legal entities with state-owned or local-owned participation to operate media outlets.**

> **RECOMMENDATION F**
>
> To clarify and narrowly define the permissible functions of local self-government media or other types of legal entities with state-owned or local-owned participation to operate media outlets with a view to ensure compliance with international standards and to avoid the misuse of local media for political ends.

97 Regulation(EU) 2024/900 of the European Parliament and the European Council of 13 March 2024 on the transparency and targeting of political advertising.

98 See e.g., OSCE/ODIHR Election Observation Reports on Poland (2018, 2020).

99 See e.g., Poland: RSF's recommendations on public media reform are partially taken into account — but the government must do more, available at: <https://rsf.org/en/poland-rsf-s-recommendations-public-media-reform-are-partially-taken-account-government-must-do>.

100 See ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 18.

5.6. State Advertising

74. Article 6.5 of the Draft Law appears to allow state organizations, state-owned legal entities, and local government entities to directly select a media organization and enter into an advertising contract with it. As a preliminary observation, it should be recalled that advertising is one of the main sources of revenue for the media industry, and advertising coming from the public sector constitutes a form of indirect subsidy. The Media Pluralism Monitor highlights the risk that "*the lack of the safeguards that could prevent the misuse of state advertising as an instrument of political control over the media, which becomes an area of great concern in times when many media organisations struggle to ensure sustainability and so rely on different lines of financial support from the State and State-owned companies.*"[101] A recent study conducted by the EU has similarly noted "*the lack of transparency around the distribution of state advertising budgets and lack of systematic rules and criteria for state advertising [which] may lead to unfair competition among news media. This is often considered as a risk for media freedom and pluralism*."[102]

75. Evidently conscious of this problem, international and regional mandate holders on freedom of expression have urged national governments to "*never abuse their custody over public finances to try to influence the content of media reporting*."[103]

76. Article 6.6 of the Draft Law demands that the activities undertaken as per Article 6.5 are "*reported transparently and publicly"*. While this is certainly a welcome principle, given the nature of state advertising as an indirect subsidy, the principles of transparency and publicity alone constitute an insufficient safeguard. In this respect, a Resolution of the Parliamentary Assembly of the Council of Europe states that "*if media receive direct or indirect subsidies, states must treat those media fairly and with neutrality*."[104] To ensure that media outlets can access state advertising revenues on a fair and neutral basis, **the Draft Law should provide for an appropriate mechanism – most importantly, one that prevents any outlet from being excluded from such opportunities on account of its editorial line or political orientation.** While no common practice can be derived on this matter;[105] in light of the above, it is nonetheless recommended that **Article 6.6 be amended to introduce a fair mechanism for the allocation of state advertising, ensuring that all media organizations have equal access to this resource, ideally through an open bidding process that guarantees equal treatment for all bidders**.

5.7. Media Concentration

77. OSCE RFoM regularly stresses the risks of media ownership concentration as a structural obstacle to free and pluralistic media and the need for independent oversight to preserve pluralistic media environments.[106] CoE Recommendation CM/Rec(2007)2 calls on states to monitor and prevent concentration that threatens media pluralism and editorial

101 Centre for Media Pluralism and Media Freedom, 'Monitoring Media Pluralism in the Digital Era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021'. European University Institute, 2022.

102 Public financing of news media in the EU - Final report. A study prepared for the European Commission DG Communications Networks, Content & Technology, Written by Henningsen Consulting and Technopolis Group, 2023, 1042. Public financing of news media in the EU - Publications Office of the EU

103 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, Joint Declaration on freedom of expression and the administration of justice, commercialisation of freedom of expression and criminal defamation, 2002, OAS :: Special Rapporteurship for Freedom of Expression.

104 PACE, Resolution 1636 (2008)1 on Indicators for media in a democracy, Principle 8.19.

105 See Mutu, A. (2023). The allocation of state advertising to private media corporations in Europe: legal and regulatory frameworks. In F. Haumer, C. Kolo, & J. Mütterlein (Eds.), Reorganization of Media Industries: Digital Transformation, Entrepreneurship and Regulation (pp. 1-10). München: Deutsche Gesellschaft für Publizistik- und Kommunikationswissenschaft e.V.

106 See e.g., OSCE RFoM, *The Impact of Media Concentration on Professional Journalism* (2003).

diversity.[107] While Article 12.1 of the Draft Law refers to the Law on Competition and the Law on Broadcasting, most international standards recognize that media concentration requires sector-specific rules beyond general antitrust provisions.[108]

78. **It is recommended to consider including in Article 12.1 of the Draft Law a reference to media-specific criteria that must be used to assess concentration within the media sector, such as impact on pluralism, audience reach, cross-media holdings, or editorial dominancy.**

79. The Draft Law does not define what thresholds or forms of concentration are considered problematic. In international practice, these may include: e.g., cross-ownership of print, radio, and TV; audience share thresholds; national vs. regional market dominance. **It is therefore recommended to introduce clear qualitative and quantitative indicators for evaluating concentration within the media sector.** The CoE Recommendation CM/Rec(2007)2[109] and Article 21 of the European Media Freedom Act[110] may also serve as a useful reference.

80. The requirement of Article 12.2 of the Draft Law that media organizations and owners "prevent actions" that undermine media freedom or competition is positive in principle. At the same time, this requirement is rather vague and may be hard to operationalize without clear definitions, enforcement mechanisms and specific sanctions or remedies for non-compliance.

> **RECOMMENDATION G**
>
> To consider including in Article 12.1 of the Draft Law a reference to media-specific criteria that must be used to assess concentration within the media sector, such as impact on pluralism, audience reach, cross-media holdings, or editorial dominancy.

5.8. Joint Media Organization

81. Article 4.1.6 of the Draft Law defines a "joint media organization" as a non-profit legal entity that owns media outlets, operates within a limited scope, and is owned and managed by citizens. As has been already highlighted, the media landscape encompasses a broad range of actors, including public, private, and community media.[111] The term "joint media" appears rather ambiguous. **For the sake of legal clarity and interpretative consistency, it is advisable to include a precise definition of "joint media" in Article 4 of the Draft Law.** This would help ensure uniform understanding and application of the term across the legislative framework.

---

[107] CoE Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, under (I) Measures promoting structural pluralism of the media.

108 See e.g., in Germany, media concentration is regulated by a special law called the Interstate Media Treaty. It sets up a dedicated media authority, the Commission on Concentration in the Media (KEK), which specifically checks mergers and ownership changes in the media sector . If a company reaches more than 30% of the national TV audience, it is considered to have too much influence over public opinion. he media regulator KEK checks not only how many people watch a company's TV channels, but also whether the company owns other types of media—like newspapers, magazines, radio stations, or online news platforms. KEK looks at the combined influence a company has across all of these outlets. There's also a rule called the 15+25 Rule, which means that even if a company doesn't reach the main threshold of 30% TV audience share, KEK can still act if, the company's TV audience share is between 25% and 30%, and it owns important media outlets in other sectors, like big newspapers or online platforms, and this combined presence could threaten the plurality of opinions in the country. To assess this, KEK uses something called an influence equivalence model. It translates the audience or reach from print, radio, and online media into a TV-equivalent format. This gives a complete picture of how much influence a media company really has, recognizing that people today get their information from many different sources, not just television.

109 CoE Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content,

[110] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act),

111 See Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2 May 2023.

82. While the definition does not explicitly elaborate on its full intent, should it attempt to reflect the international model of a community media organization, this would be a welcome inclusion. Community media can play a crucial role in strengthening democracy and civil society by enabling local communities, especially those often marginalised, to participate in public life and access essential information.

83. Although definitions of what constitutes community media and broadcasting vary across jurisdictions, key principles tend to converge on the idea that such organizations are "*private entities with public objectives*",[112] operating independently, on a non-profit basis, and governed by and for the communities they serve.[113] The Draft Law reflects several of these core principles. Article 10.1 of the Draft Law positively affirms the independence of joint media organizations from political and economic interests.

84. However, some of the provision's language is ambiguous – particularly the requirement that such organizations "*may be established and operate within a specific territory and in a limited manner*." While joint media organizations may be rooted in geographic communities or communities of interest such as those defined by shared cultural, social, or linguistic characteristics, the wording could be clarified to ensure that operation within a defined territory is not a requirement.[114] A rigid territorial limitation risks excluding communities that are culturally or socially connected but geographically dispersed.

85. Moreover, the requirement that these organizations have a "limited scope" or operate "*in a limited manner*" appears in both Articles 10.1 and 10.2 yet remains undefined. Such terms are extremely vague and may unduly restrict the activities or influence of these media organizations, especially if interpreted rigidly by regulators. Under international law, as underlined above, restrictions on media freedom must meet the strict requirements set out in Article 19 (3) of the ICCPR, in particular they must be clearly defined, proportionate, and necessary. UNESCO has cautioned against imposing general limitations on the operations of community media, emphasizing that no unnecessary barriers should prevent or discourage communities from establishing and operating such services.[115]

86. While it is recognized that broadcast regulators may need to impose certain technical limitations, these should be based on "real rather than theoretical considerations".[116] What is essential is that broadcasters are able to reach their intended communities. **Article 10 should therefore be revised to specify the nature of any permissible limitations,[117] in order to avoid the imposition of general restrictions that are inconsistent with international standards.**

In addition, the provision does not address how joint media organizations will be funded. In general, finding sustainable funding is one of the key challenges for community media.[118] While community media funding models vary across jurisdictions, sustainable sources of public funding are widely recognized as crucial to the development and long-

112 See e.g., the Charter of Community and Citizen Radio Broadcasters was prepared in 1988 by the World Association of Community Radio Broadcasters (AMARC); UNESCO, *Community Media Sustainability* (UNESCO Policy Series 1, CI/MDE/2023/CM/1, 2017), pp. 4-5.

113 See Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue (Adopted by the Committee of Ministers on 11 February 2009 at the 1048th meeting of the Ministers' Deputies); UNESCO, *Community Media Sustainability* (UNESCO Policy Series 1, CI/MDE/2023/CM/1, 2017), page 1-4

114 UNESCO, *Community Media Sustainability* (UNESCO Policy Series 1, CI/MDE/2023/CM/1, 2017), p. 3.

115 *Ibid.*, p. 8.

116 *Ibid.*, p. 9.

117 For example, many countries impose conditions on broadcasting, such as limits on transmitter power, range, height, and strength. While limited power may be adequate for compact communities, larger or more dispersed ones, especially in difficult terrain like mountains, require stronger systems. What matters is that regulations consider overall spectrum availability rather than applying uniform restrictions. (UNESCO, *Community Media Sustainability* (UNESCO Policy Series 1, CI/MDE/2023/CM/1, 2017)).

118 See e.g., Council of Europe, Martina Chapman, Nadia Bellardi and Helmut Peissl, "Media Literacy for All: Supporting Marginalised Groups through Community Media" (2020), p. 18.

term viability of community broadcasting.[119] In light of this, Article 10 of the Draft Law should be revised to clarify how joint media organizations will be supported financially, and to ensure that sustainable funding mechanisms, particularly those involving public support, are made available.

87. In light of the above, **it is therefore recommended that the definition of a joint media organization is defined to specify the intended limitations – ensuring that they are in line with Article 19 of the ICCPR – in order to provide legal certainty and align with the broader objectives of media regulation. It is recommended to clarify what "limited" means (e.g., geographic focus, non-profit status, editorial mandate), and ensure that it does not prevent joint media organizations from engaging in legitimate public interest reporting or reaching broader audiences.**

5.9. Independent Media Regulatory Authority

88. While regulated by other laws, the Draft Amendments do not attempt to streamline the regulatory and oversight institutional framework for the media sector. International and regional standards recommend, or even mandate, the establishment of independent and impartial regulatory authorities for the media sector.[120] There is a number of examples in the OSCE participating States where independent bodies have been entrusted with media regulation.[121] 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*

119 See UNESCO, *Community Media Sustainability* (UNESCO Policy Series 1, CI/MDE/2023/CM/1, 2017) pp. 19-20.

120 See e.g., the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 39. As an example, the EU Audio-Visual Media Services Directive requires the establishment of such an independent regulatory authority. See also e.g., International Mandate-Holders on Freedom of Expression, *Joint Declaration on Freedom of Expression and Responses to Conflict Situations*, 4 May 2015, clause 4(a), note 9; ODIHR and OSCE RFoM Joint *Legal Analysis of the Draft Law on Mass Media of the Republic of Uzbekistan*, November 2020, Chapter 2; and Venice Commission, *Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service*, CDL-AD(2020)013, paras. 34-37. With respect to the broadcasting sector in particular, the CoE Recommendation on the independence and functions of regulatory authorities for the broadcasting sector lays down several conditions for guaranteeing the independence of such bodies, including a legislative framework that clearly affirms and protects their independence, outlines their duties and powers, establishes their accountability structure, sets out procedures for the appointment of members, and defines the means of their funding; particular emphasis within such a framework should be placed on shielding regulatory authorities from interference by political forces and economic interests; see CoE *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, paras. 1 and 9; see also CoE Committee of Ministers, '*Declaration on the independence and functions of regulatory authorities'*, 26 March 2008, with its annex including details on existing legislative frameworks of members states (at the time) and guidance on best practices and suitable legal and institutional frameworks for the set-up of independent regulatory authorities).While the CoE Recommendation Rec(2000)23, which dates back to 2000, only focuses on the broadcasting sector, over the past twenty years, there has been a general trend – across Europe and beyond – towards increasingly 'converged' regulatory authorities with competence over communications, broadcasting, and, more recently, digital media sectors. As an example of this development, see e.g., the 2018 revision of the EU Audiovisual Media Services Directive, which extended the scope of the Directive – and the remit of national regulatory authorities – to include video-sharing platform services and even vloggers (i.e., individuals who produce video blogs and publish them online), provided that they provide an on-demand audio-visual media service of an economic nature, directed at the general public, where the vlogger exercises editorial responsibility over a catalogue of informative, entertaining or educational programmes delivered via electronic communications networks; see Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (the Audiovisual Media Services Directive), Rec.4. While audiovisual regulatory authorities across EU Member States now often include vloggers within their remit, different authorities take varying approaches to this task and interpret the inclusion of vloggers in different ways (typically, vloggers are considered to fall under a regulatory authority's remit only when their activity generates a certain level of financial income or when their service reaches a particular threshold of views, followers, and/or subscribers); see ERGA, Consistent implementation and enforcement of the European framework for audiovisual media services Deliverable 3 Learning from the practical experiences of NRAs in the regulation of vloggers (Deliverable 3) Public report, 2023. In any case, the material scope of regulatory requirements under the AVMSD includes the prohibition of incitement to hatred and public provocation to commit a terrorist offence, the protection of minors, and requirements concerning commercial communications (see Articles 5, 7, 9, 11, 13, 16, 18, 33a of the AVMSD); national regulatory authorities do not monitor vloggers' compliance with journalistic standards or ethical and professional codes.

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

guaranteed and protected by law. This should include a participatory and transparent appointment process for the governance and senior managerial structures of these bodies, the ability to employ their own qualified staff, and a clear mandate and power of regulation as well as public accountability and adequate funding."[122] In addition, as underlined in previous opinions of the OSCE RFoM and ODIHR, "*any legitimate media regulator should enjoy political, functional, managerial and financial independence from the Government, as well as from political, commercial and other interests*".[123] Crucially, the financing of such authorities is defined as a key element in their independence and states should specify in their legislation mechanisms to ensure that they carry out their functions fully and independently and to guarantee financial independence and sustainability.[124]

89. Moreover, the OSCE RFoM and ODIHR underline that "[t]he appointment system for members of this body should ensure diversity of the representation and prevent political dependency and conflict of interests".[125] Accordingly, it is important to ensure a participatory and transparent appointment process for the governance and senior managerial structures of these bodies,[126] while seeking to reach gender balance or even parity in their composition, in line with CEDAW Committee Recommendation No. 40.[127]

90. As recommended by RFoM and ODIHR in the past, the legal drafters should consider consolidating media regulation and oversight under a single, independent regulatory body equipped with transparent methodologies and sufficient human and financial resources to ensure timely and effective enforcement of legal requirements for impartial coverage, and guarantee independence.[128] It should be noted though that in spite of the trend of 'converged' independent regulatory authorities for the broadcasting and digital industries, converged regulators are normally not assigned to supervise the press sector (as for instance acknowledged, most recently in the EU Media Freedom Act[129].

5.10. Transparency

91. To strengthen alignment with international standards, it is recommended **to revise or supplement the provisions of Article 11 to explicitly require disclosure of any direct or indirect ownership by a state, public authority, or state-owned entity**. This would ensure that the public and regulators are fully informed not only about private ownership structures but also about potential governmental influence, thereby reinforcing transparency and safeguarding editorial independence and media pluralism. Moreover, **in Article 11.1.3 of the Draft Law, it may be useful to specify how and where agreements on editorial independence between the founders or shareholders of media organizations and their editorial offices are to be disclosed** (e.g., corporate

122 See International Mandate-Holders on Freedom of Expression, *2023 Joint Declaration on Media Freedom and Democracy*.
123 See e.g., ODIHR and OSCE RFoM Joint *Legal Analysis of the Draft Law on Mass Media of the Republic of Uzbekistan*, November 2020, p. 5.
124 See e.g., with respect to the broadcasting sector, CoE, *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, para. 9. See also UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 16, which requires States to guarantee the independence and editorial freedom of public media and to provide for sustainable funding.
125 See e.g., ODIHR and OSCE RFoM Joint *Legal Analysis of the Draft Law on Mass Media of the Republic of Uzbekistan*, November 2020, Chapter 2.
126 See International Mandate-Holders on Freedom of Expression, *Joint Declaration on Media Freedom and Democracy* (2023), p. 4(a).
127 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 31 (e), which recommends to: "*Adopt legislation and cooperate with media outlets to condemn, monitor and ensure accountability for sexism and misogyny, whether in public discourse or in mainstream or social media, **to reach parity in editorial boards and media regulatory bodies** and to enhance the capacity of media professionals and digital outlets to prevent the perpetuation of stereotypes about women in decision-making and ensure the equal visibility and valorization of women and their objective portrayal*".
128 See ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 19.19. See also International Mandate-Holders on Freedom of Expression, *2023 Joint Declaration on Media Freedom and Democracy*.
129 See Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), Rec. 36: *'[N]ational regulatory authorities or bodies often do not have competence related to the press sector*.'

websites, regulatory filings) for clarity and consistency and that this information is easily and directly accessible.

92. Guarantees of transparency presupposes a number of duties and obligations from the State. To complement the provisions of Chapter 3, **the legal drafters should consider creating and/or referencing a central media ownership database managed by an independent regulatory authority where data on ownership would be stored and updated.**

6. SELF-REGULATION OF THE MEDIA SECTOR

6.1. General Comments

93. It is generally recognized that by promoting self-regulation and professional standards, editorial freedom and media independence can be enhanced, while also enhancing the plurality of the media and diversity of voices, issues and opinions.[130] Self-regulation should be the cornerstone of media accountability, supported –where needed – by co-regulation, and that any regulatory interference must be limited, necessary, and proportionate.[131] While reference to self-regulation may be included in media laws, it should be framed more as an encouragement than a mandate and over-regulation should be avoided, in order to ensure the flexibility and genuine ownership needed for effective self-regulation of the media sector.

94. Article 14 of the Draft Law provides for the establishment of a self-regulatory body for the media sector, which will independently determine its structure, organization, and activities (14.1). The provision represents a positive and commendable approach to establishing an independent self-regulatory system for the media sector in Mongolia, in line with good practices and recommendations.[132] A similar orientation has also been expressed by the OSCE, encouraging "*the adoption of voluntary professional standards by journalists [and] media self-regulation*" in its Decision on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding,[133] and also reflects UNESCO's recommendations.[134]

95. Articles 14.2 to 14.4 of the Draft Law mentions the key tasks of the self-regulatory body i.e., adoption of professional ethical standards for the media sector, processing of complaints from individuals or legal entities regarding violations of the ethical standards and issuance and publication of professional opinions on such issues. It is not clear whether its functions will be strictly limited to such fields. It is generally important that the media actors themselves develop, set and maintain, through transparent and participatory processes, effective self-regulatory mechanisms to uphold ethical and deontological standards.[135] To ensure that the self-regulatory mechanism is meaningful and effective, it is important to consult with journalists, editors, media organizations, and civil society throughout the process of establishing the self-regulatory body and determining its structure, organization and activities. In addition, such policies and mechanisms should incorporate **comprehensive equality principles to prevent and**

130 See e.g., OSCE RFoM, *Safety of Journalists Guidebook* (3rd ed., 2020), p. 65.
131 Summary Report of the Secretary General of the 5th European Ministerial Conference on Mass Media Policy, Thessaloniki, 11-12 December 1997.
132 See e.g., UNESCO, The Importance of self-regulation of the media in upholding freedom of expression, 2011; The Online Media Self-Regulation Guidebook, OSCE/RFoM, 2013; and The Media Self-Regulation Guidebook, OSCE/RFOM, 2008. See also ODIHR-OSCE RFoM, *Joint Opinion on the Draft Information Code of the Republic of Uzbekistan* (2024), para. 97; see also and Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2023, p. 9; 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.
133 OSCE. Decision No. 13/06. Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding.
134 See UNESCO, The Importance of Self-Regulation of the Media in upholding freedom of expression. CI Debates N.9 – February 2011.
135 See International Mandate-Holders on Freedom of Expression, *Joint Declaration on Media Freedom and Democracy* (2023), p. 9(e) and (f).

combat discrimination, sexism and misogyny in media content, ensure the equal visibility and valorization of women and their objective portrayal in the media, but also promote gender balance and diversity within the media sector work force, at all levels, including decision-making, while putting in place policies and accessible complaints mechanisms in case of discrimination and harassment.[136] **It is recommended to supplement Article 14 with explicit reference to such principles and scope of work for the self-regulatory body.**

96. Article 14.5 further specifies that use of the complaint mechanism should not restrict the right of individuals or legal entities to file complaints with the editorial office or courts. Article 7.2 specifies that *"[r]elations related to the establishment and registration of media organizations shall be regulated by the relevant laws*".

97. First, while going beyond the immediate scope of the Draft Amendments submitted for review, it is worth referring to the recommendations made by ODIHR regarding the regulation and oversight of broadcast and online media in Mongolia. In its Final Report on the last parliamentary elections in 2024, ODIHR noted that *"[o]versight of broadcast and online media is shared among multiple bodies, including the General Election Commission (GEC), but predominantly, the Communications Regulatory Commission (CRC) and the Authority for Fair Competition and Consumer Protection (AFCCP), [which] are the responsible entities*", also noting that "*there are no provisions for a unified channel for lodging media-related complaints*", which may be filed with the CRC, AFCCP or GEC, but also with the first-instance court or the police.[137] It is not clear whether the complaint mechanism before the self-regulatory body contemplated in Article 14 of the Draft Law will add yet another channel for complaints, in addition to existing ones. If this is the case, it should be reiterated that overlapping and not clearly delineated competencies related to supervision and adjudication of complaints hinder effective and timely access to legal remedy.[138]

98. The following Sub-Sections provide considerations that are primarily relevant at the stage of developing the actual self-regulation mechanisms.

6.2. Composition of the Self-Regulatory Body

99. The Parliamentary Assembly of the Council of Europe (PACE), in its Resolution on the Ethics of Journalism,[139] encourages the establishment of broad-based self-regulatory bodies composed of journalists, editors, academics, judges, and media users, reflecting a multi-stakeholder approach to media accountability. The Draft Legislation does not currently specify who will constitute the self-regulatory body.

100. To ensure pluralism, transparency, and credibility of self-regulation, **the legal drafters following meaningful consultations with all relevant stakeholders may consider explicitly providing in Article 14 of the Draft Law for the inclusion of a diverse composition – such as journalists, editors, civil society representatives, academics, and potentially a public ombudsperson, while seeking to reach gender balance or even parity in the composition of the said body,** in line with CEDAW Committee Recommendation No. 40.[140]

136 See International Mandate-Holders on Freedom of Expression, *Joint Declaration on Media Freedom and Democracy* (2023), p. 9(e) and (f). See also CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 31 (e).
137 See ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 19.
138 See ODIHR, *Mongolia ODIHR Election Observation Mission Final Report - Parliamentary Elections*, 28 June 2024, p. 19.
139 See PACE, doc. 6854, Report on the ethics of journalism, 17 June 1993.
140 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 31 (e), which recommends to: "*Adopt legislation and cooperate with media outlets to*

6.3. Effectiveness of the Self-Regulatory Body

101. Article 14.4 of the Draft Law commendably promotes transparency and responsiveness by requiring the publication of decisions by the self-regulatory body. This is in line with good practices reflected in the Council of Europe standards. However, drawing on the EU experience – particularly Article 4a(7) of the Audiovisual Media Services Directive (AVMSD) and its implementation reports – it is evident that voluntary codes of conduct and self-regulatory frameworks often lack effectiveness if they are not subject to regular monitoring, enforcement, and periodic evaluation. The current Draft Law does not provide any mechanism for future reviews of the adopted professional ethical standards or assessment of the self-regulatory body's performance.

102. To strengthen the accountability and impact of the self-regulatory framework, it is advisable to include a provision requiring the self-regulatory body to publish annual reports on its decisions and activities.

6.4. Complaint Mechanism

103. The 2009 Council of Europe Resolution[141] and the PACE Resolution on the ethics of journalism[142] highlight that self-regulatory mechanisms in the media sector must be both accessible and effective, particularly for individuals or groups who believe their rights have been violated by media content. While Article 14.3 of the Draft Law outlines a complaint process, it could be strengthened to better reflect these principles.

104. To ensure genuine access to remedies, **the Draft Law could explicitly require that the complaints mechanism is free of charge, operates within a reasonable timeframe, is clearly visible and easy to use (with clear filing instructions), and is capable of providing meaningful redress – such as corrections, rights of reply, apologies, or formal ethical assessments**.[143] This would enhance the self-regulatory mechanism's credibility and encourage public trust.

RECOMMENDATION H

1. To frame media self-regulation provisions more as an encouragement than a mandate in order to ensure the flexibility and genuine media sector ownership needed for effective self-regulation.

2. To supplement Article 14 suggesting for self-regulation to encourage comprehensive equality principles to prevent and combat discrimination, sexism and misogyny in media content, ensure the equal visibility and valorization of women and their objective portrayal in the media, but also promote gender balance and diversity within the media sector work force, at all levels, including decision-making, while putting in place policies and accessible complaints mechanisms in case of discrimination and harassment.

*condemn, monitor and ensure accountability for sexism and misogyny, whether in public discourse or in mainstream or social media, **to reach parity in editorial boards and media regulatory bodies** and to enhance the capacity of media professionals and digital outlets to prevent the perpetuation of stereotypes about women in decision-making and ensure the equal visibility and valorization of women and their objective portrayal*".

141 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, A new notion of media?, (28 and 29 May 2009, Reykjavik, Iceland), Political declaration and resolutions, point 10.

142 PACE, doc. 6854, Report on the ethics of journalism, 17 June 1993

143 See e.g., CoE, Steering Committee on the Media and New Communication Services (CDMC), *Report on the meeting on the operation and functioning of media complaints procedures and media complaints bodies* (2008), particularly p. 4.

7. JOURNALISTIC PRIVILEGES AND RESPONSIBILITIES

7.1. Editorial Freedom

105. Article 4.1.5. of the Draft Law provides a definition of "editorial office" as a unit or individual responsible for a range of activities including "*defining, creating, and verifying*" the content disseminated to the public. The inclusion of provisions on media responsibilities in the Draft Law is a positive and welcome element. In the current climate of growing public distrust in journalism and the widespread dissemination of disinformation, it is essential that media actors adhere to comprehensive professional and ethical standards. Journalists play a vital role in a democratic society by informing the public, facilitating accountability of public authorities, and fostering informed public debate. To fulfil this role effectively and maintain credibility, the media must demonstrate accuracy, fairness, and accountability in their reporting.

106. As noted in Sub-Section 4.3 above, while the definition of "editorial office" appears largely uncontroversial, its reference to 'verifying' content does not align with traditional understandings of editorial control, which should involve a range of practices that extend beyond formal verification of information.[144]

107. Any legal framework imposing responsibilities on the media must strike a careful and proportionate balance. Article 8.4 of the Draft Law is consistent with the ethical standards of journalism and the right to reputation under Article 17 ICCPR, provided that liability does not become strict or punitive in a way that may have a chilling effect on free speech. **It may be helpful to clarify that this provision does not impose automatic liability for minor errors or good-faith reporting**.[145]

108. In this respect, it should be recalled that several regional recommendations and declarations emphasize the principle of editorial independence as a foundational pillar of media freedom. Among these, for instance, the 2022 European Commission's *Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector* explains at length that "*[e]ditorial independence shields editors and journalists from conflicts of interest and helps them to resist undue interference and pressure. Therefore, it is a prerequisite for the production and circulation of unbiased information and an essential facet of media freedom. It enables the provision and reception of independent and pluralistic media services by citizens and businesses across the Union. This is particularly relevant for media service providers providing news and current affairs content, irrespective of its format*."[146] The very same principle has been also stressed in the recent EU Media Freedom Act, where editorial independence is defined as a "precondition" for media service providers to be able to discharge their democratic function.[147] The ECtHR has provided helpful guidance on this general principle, highlighting how editorial freedom implies that the media can decide on both the substance and the form in which information is conveyed.[148] Implementing this principle is characterised as an express duty of state authorities, as the Court noted that "*[a]ny governance measures by States have to respect media freedom and refrain*

144 See e.g., CoE Committee of Ministers, Recommendation CM/REC(2011)7 on a new notion of media, 21 September 2011, paras. 30-35. Editorial processes typically consist of established routines and conventions such as commissioning, selecting, processing, or validating content, rather than a narrow focus on fact-checking, and may include both ex-ante (pre-publication) and ex-post (post-publication) moderation, and may be carried out by editorial boards, designated staff, or automated systems.

145 See e.g., the caselaw of the ECtHR, including *Bladet Tromsø and Stensaas v. Norway [GC]*, no. 21980/93, 20 May 1999; and *Fressoz and Roire v. France [GC]*, no. 29183/95, 21 January 1999.

146 See e.g., EU, Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector, C/2022/6536 OJ L 245, 22 September 2022, pp. 56–65, Rec. 11.

147 See e.g., EU, Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act),, Preamble para 17 and Article 6 (3)(a).

148 See e.g., ECtHR, *Oberschlick v. Austria*, no. 11662/85, 23 May 1991, para. 57.

from restricting the editorial independence and the operational autonomy of media."[149] **These general principles could be further reflected in the Draft Law.**

7.2. Protection of Journalistic Sources

109. From the Draft Law, it is not fully clear how the system for protecting journalistic sources is organized in Mongolia, and whether decisions to disclose a source of journalistic information are subject to review by an independent court.

110. Article 4.1.7 defines "source" as the facts or individuals that provide information forming the basis of reporting. The inclusion of "facts" in the definition of a source is unusual and departs from established international standards.[150] This broadening risks conflating the protection of individuals who supply information with the protection of the information itself, which could complicate the interpretation of the related provisions, in particular the "right to protect sources" under Article 4.1.8. Accordingly, **the definition should be revised to exclude 'facts' in order to avoid inadvertently extending legal protections to raw information rather than to the individuals who provide it,** which could distort the intended scope of the Draft Law.

111. The United Nations and the Council of Europe emphasize the importance of comprehensive protection of journalistic sources. The UN Human Rights Committee's General Comment No. 34 underlines that the right to protect sources is a key element of the right to freedom of expression and should apply broadly, including to those providing information in the public interest.[151] The Council of Europe Committee of Ministers Recommendation No. R(2000)7 encourages a broad interpretation of "source", encompassing any person who provides information to a journalist, whether actively (e.g., sending documents) or passively (e.g., consenting to being recorded).[152] This wide scope reflects the importance of source confidentiality in safeguarding press freedom and preventing chilling effects on whistleblowers and informants.[153] In that context, it is important to ensure the adequate protection of "whistleblowers" (i.e., individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy) releasing information on violations of the law, on wrongdoing by public bodies or abuse of public office, on a serious threat to health, safety or the environment, or on violations of human rights or international humanitarian law – all such information is considered presumptively as information of public interest.[154] These individuals should be protected against legal, administrative or employment-related sanctions if they act in "good faith" when releasing information.[155]

112. In light of this, **it may be advisable to broaden the definition to reflect that a source can be any individual or entity providing information, whether directly or**

149 See e.g., CoE, Principles for media and communication governance - explanatory report (2022), 36.
150 See e.g., CoE, Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information, para. 17, where a source is defined as "any *person* who provides information".
151 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 45.
152 Available at: <https://rm.coe.int/16805e2fd2>.
153 The Council of Europe Committee of Ministers Recommendation No. R(2000)7 expands protection to: the name of a source and his or her address, telephone and telefax number, employer's name and other personal data as well as the voice of the source and pictures showing a source; "the factual circumstances of acquiring this information", for example the time and place of a meeting with a source, the means of correspondence used or the particularities agreed between a source and a journalist;"the unpublished content of the information provided by a source to a journalist", for example other facts, data, sounds or pictures which may indicate a source's identity and which have not yet been published by the journalist; "personal data of journalists and their employers related to their professional work", i.e. personal data produced by the work of journalists, which could be found, for example, in address lists, lists of telephone calls, registrations of computer-based communications, travel arrangements or bank statements.
154 See e.g., International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 4th paragraph. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), para. 148; and See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, *Report on the Protection of Sources and Whistleblowers* (2017), A/70/361, paras. 10 and 63.
155 See e.g., International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 4th paragraph. See also, for the purpose of comparison, European Court of Human Rights, *Halet v. Luxembourg*, no 21884/18, 14 February 2023, paras. 128-130.

indirectly; and that protection should extend not only to the identity of the source but also to any data that could lead to their identification.

113. Article 13 of the Draft Law sets out the right of journalists and media organizations to protect the confidentiality of their sources. This is a welcome and important safeguard, as the protection of journalistic sources is a cornerstone of freedom of the media.[156]

114. Article 13.2 of the Draft Law recognizes the importance of source confidentiality and suggests that disclosure should only occur under exceptional circumstances. The formulation of Article 13.2, however, may introduce uncertainty. It provides that disclosure of a source may occur if the information cannot be obtained by other means and if disclosure is necessary to prevent a crime likely to result in "serious and real harm to human life or health". This is phrased in a way that suggests it is for the journalist or media organization to determine whether the disclosure is warranted, which is conceptually problematic. Where a right is at issue, the Draft Law should not imply circumstances in which the rights-holder is expected to waive it. Rather, any interference with the right must be clearly set out in law and be compliant with the requirements set out in relevant international instruments, it should be applied by a competent, independent authority, and subject to appropriate procedural safeguards.

115. According to international standards, a decision imposing disclosure of journalistic sources should only be made by a court or an independent judicial authority, based on strict and clearly defined criteria. Both the Council of Europe Recommendation CM/Rec(2000)7[157] and case law of the European Court of Human Rights[158] underline that judicial oversight is essential to protect journalists from arbitrary or forced disclosure of confidential sources. Article 13.2 of the Draft Law does not mention court approval, nor does it offer any possibility to appeal the disclosure decision. This creates dangerous ambiguity and risks rendering provision on the protection of sources practically futile. The phrase "*it is considered justified*" is also too vague and subjective, offering no clear legal guideline as to the criteria which should be applied in such cases and the authority who is supposed to decide on whether or not the disclosure of sources would be "justified" in each particular case.

116. International standards acknowledge that source protection may be subject to limitations, but only in narrowly defined and exceptional cases. The Council of Europe's Recommendation on the right of journalists not to disclose their sources recognizes that disclosure may be permissible in limited and clearly defined circumstances.[159] Principle 3 of the CoE Recommendation affirms that any restriction must comply with Article 10 (2) of the European Convention on Human Rights which enshrines the right to freedom of expression, and hence, any disclosure must be justified by an overriding requirement of public interest, be strictly necessary in a democratic society, and responding to a pressing social need. Likewise, The European Court of Human Rights has emphasized that such measures must also be proportionate and accompanied by appropriate safeguards.[160]

117. To avoid legal ambiguity and confusion as well as to ensure consistency with international standards, **the Draft Law should make it clear that any exception from the right to protect journalistic sources must be narrowly framed, limited to**

156 See UNESCO, Julie Posetti and others, *The Chilling: Global Trends in Online Violence against Women Journalists*, research discussion paper (Paris, UNESCO, 2022).

157 See CoE, Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information, Principe 5.c.

158 See e.g., ECtHR, *Sanoma Uitgevers B.V. v. The Netherlands [GC]*, no. 38224/03, 14 September 2010.

159 CoE, Explanatory Memorandum to Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.

160 See e.g., ECtHR, *Goodwin v. United Kingdom [GC]*, no. 17488/90, 27 March 2002; Council of Europe, *The Protection of Journalistic Sources: A Cornerstone of the Freedom of the Press* (Thematic Factsheet, June 2018).

circumstances where disclosure is necessary to prevent serious harm and where no less intrusive alternative is available. Any such exception should be subject to judicial oversight and be grounded in the principles of necessity and proportionality as reflected in the international standards.

118. The Draft Law also proposes amendments to the Law on Violations by introducing Article 14.16 (2), which provides for sanctions against individuals or legal entities that unlawfully compel a journalist or media organization to disclose their source of information. This is a welcome step in reinforcing the protection of journalistic sources. However, to ensure legal certainty and full compliance with principles of necessity and proportionality, it is **advisable to explicitly clarify that only a court may authorize the disclosure of a confidential source, and solely in exceptional and narrowly defined circumstances, such as when it is strictly necessary in a democratic society.** Such provision would help to preclude improper interference by state or non-state actors and safeguard the standards of protection of journalistic sources.

7.3. Liability of Sources of Information

119. Article 5.3 of the Draft Law provides that "…[i*]f the source's information and expression are directly transmitted, published, or broadcast through a media outlet, the responsibility for any consequences arising from this information shall be held by the source that provided it*". It remains unclear whether the transfer of responsibility to the source, as stipulated in the current provision, applies exclusively to live broadcasting. If this is indeed the case, it should be explicitly clarified in the Draft Law. Furthermore, even if a media outlet or a journalist is not directly liable for illegal and/or harmful content expressed by an external speaker in a live broadcast, it would still be a journalistic responsibility to counteract such expressions and/or to place them within the relevant context. As recommended by the international mandate holders on freedom of expression, "*Media should proactively work towards identifying and changing harmful stereotypes and should counteract disinformation, hate speech, discriminatory norms and attitudes as well as negative prejudice in their coverage and reporting. Professional codes of conduct for the media and journalists should incorporate comprehensive equality principles. Such codes should also set required minimum standards on how to report on statements or instances related to discrimination in order not to perpetuate or aggravate intolerance*."[161]

120. Across the United Nations,[162] the Council of Europe,[163] and OSCE commitments[164], the primary responsibility for what is finally published rests with the editor or publisher, who is expected to verify and contextualise the material. Making sources automatically liable for "any consequences" could deter people from disclosing information of public interest, undermining the very watchdog role journalism is meant to play. Liability rules normally distinguish between good-faith disclosures and malicious or knowingly false statements. A blanket rule could be seen as disproportionate under the legality–necessity–proportionality test applied in international human rights law.

121. According to the ECtHR, particularly in the *Jersild v. Denmark* case,[165] journalists are not automatically responsible for hateful or offensive views expressed by others in interviews or broadcasts. However, while journalistic freedom includes reporting on

161 See Joint Declaration on Media Freedom and Democracy, International Mandate-Holders on Freedom of Expression, 2 May 2023.

162 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 45.

163 See e.g., CoE, Committee of Ministers, Recommendation CM/REC(2011)7 on a new notion of media, 21 September 2011; see also ECtHR, *Bladet Tromsø and Stensaas v. Norway [GC]*, no. 21980/93, 20 May 1999.

164 See e.g., OSCE Ministerial Council Decision No. 3/18, "Safety of Journalists", 12 December 2018, p. 3. See also OSCE RFoM, Safety of Journalists Guidebook, 3rd edition, 10 November 2020.

165 See ECtHR, *Jersild v. Denmark* [GC], no. 15890/89, 23 September 1994, para. 34.

controversial topics, this should be balanced with responsibilities to inform without spreading harm and journalists have thus a duty to handle such content with care. In particular, they should show critical distance from them, provide context, and critically frame the content – also explaining the public interest behind reporting such content, to avoid the impression of endorsement, especially in the context of live broadcast.[166] If they fail to do so, especially by presenting hate speech without comment or context, they risk being seen as complicit.

122. **It is recommended to clarify in the Draft Law that the shift of responsibility to the source applies exclusively to live broadcasting, in order to prevent overly broad interpretations.** It would be advisable **to revise the provision so that editorial responsibility remains with the journalist or media outlet that decides to publish**. A source may be exposed to liability where it can be shown that they knowingly provided false or unlawfully obtained material with malicious intent.

RECOMMENDATION I

1. To revise the definition of 'source' to exclude 'facts' in order to avoid inadvertently extending legal protections to raw information rather than to the individuals who provide it, which could distort the intended scope of the Draft Law and to broaden the definition to reflect that a source can be any individual or entity providing information, whether directly or indirectly; and that protection should extend not only to the identity of the source but also to any data that could lead to their identification.

2. To clarify in the Draft Law that any exception from the right to protect journalistic sources must be narrowly framed, limited to circumstances where disclosure is necessary to prevent serious harm and where no less intrusive alternative is available. Any such exception should be subject to judicial oversight and be grounded in the principles of necessity and proportionality as reflected in the international standards.

3. To clarify in the Draft Law that the shift of responsibility to the source applies exclusively to live broadcasting, in order to prevent overly broad interpretations. It would be advisable to revise the provision so that editorial responsibility remains with the journalist or media outlet that decides to publish. A source may be exposed to liability where it can be shown that they knowingly provided false or unlawfully obtained material with malicious intent.

7.4. Other responsibilities

123. Article 5.1 of the Draft Law lays out several principles that should be adhered to in journalistic activities. At the same time, several rather broad notions are included therein, which risk negatively affecting media freedom depending on how these provisions are interpreted and applied in practice. While some principles reflect established journalistic standards, the potential overbroad interpretation of certain provisions could raise serious concerns.

7.4.1. National Security, Human Rights and the Public Interest

166 See e.g., ECtHR, *Jersild v. Denmark* [GC], no. 15890/89, 23 September 1994, para. 34.

124. Article 5.1.3 of the Draft Law provides a list of general aims and values that journalists should "prioritize" in their activities, such as national security, human rights and the public interest. The current phrasing implies equal or even primary priority for national security, which can hinder media freedom if not carefully framed. In practice, journalists must carefully balance these interests in each case, not simply "prioritize" them according to a strict pre-defined hierarchy. For example, exposing government wrongdoing for the benefit of public interest may be in tension with certain aspects of national security or publication of certain public interest material about a person can impinge on their right to privacy.

125. With respect to national security specifically, the OSCE RFoM has consistently emphasized that media freedom and national security are not inherently in conflict and that media freedom and democracy are integral to security[167] – in fact, journalistic activity often contributes directly to the strengthening of national security in democratic societies. The RFoM has underscored that independent journalism enhances national security by promoting transparency, accountability, and the rule of law. Investigative reporting into corruption, abuse of power, or institutional failure – especially in the security and defence sectors – helps expose systemic vulnerabilities before they can be exploited by foreign or internal threats. Exposing police brutality or intelligence overreach helps ensure public trust in law enforcement institutions. Reporting on procurement fraud in military or police structures may prevent economic losses and security gaps. In various reports and joint declarations, the RFoM has stressed that journalists should not be seen as threats but as essential partners in protecting democratic security.[168] Criminalizing or unduly restricting journalistic activity under overbroad "national security" grounds often backfires, thus, weakening both media freedom and national security itself.

126. As to sharing of classified information, certain data may legitimately be classified on grounds of national security or protection of other overriding interests listed in Article 19 (3) of the ICCPR.[169] At the same time, as noted in the *ODIHR Guidelines on the Protection of Human Rights Defenders*, national security is frequently used to justify the over-classification of information, thus limiting access to information of public interest and creating another obstacle for whistleblowers and investigative journalists trying to bring to light alleged corruption and human rights violations by state actors.[170] Hence, secrecy laws should precisely define national security grounds and list exhaustively all possible prohibited disclosures, which should be narrowly and clearly defined and be necessary and proportionate to protect national security. 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.[171] Moreover, disclosure should not be restricted in the absence of the Government's showing of "*a real and identifiable risk of significant harm to a legitimate national security interest*"[172] that outweighs the public's interest in the information to be disclosed.[173] If a disclosure does not harm a legitimate

167 See e.g., OSCE RFoM, *Research Report "Media Freedom, Democracy, and Security"* (2024).
168 See e.g., International Mandate-Holders on Freedom of Expression, *2013 Joint Declaration on Professional Journalism and Self-Regulation.*
169 See e.g., International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.
170 ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), para. 144.
171 See e.g., International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.
172 See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, *Report on the Protection of Sources and Whistleblowers* (2017), A/70/361, 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).
173 See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, *Report on the Protection of Sources and Whistleblowers* (2017), A/70/361, para. 10.

state interest, there is no basis for its suppression or withholding.[174] 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.[175]

127. In light of the above, any potential regulation of sharing of information without due reference to the essential role played by the media in a democratic society and its duty to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest may unduly impact on freedom of expression.[176]

128. Against this background, a list of discretionary priorities that media outlets ought to prioritize in their operations risks impinging on independent editorial decisions concerning the content and form of media expression. As underlined above, limitations to media freedom can only be based on legitimate aims as enumerated in the exhaustive[177] list provided under Article 19 (3) of the ICCPR and are subject to the tests of necessity and proportionality. While national security is a legitimate interest deserving protection, international standards emphasize that it should not be used as a blanket justification for limiting media freedom. Any decision should instead be based on a case-by-case assessment of the necessity of restrictions and their proportionality in the situation at stake, i.e., whether a less restrictive measure would be available.

129. **It is therefore recommended to amend Article 5.1.3 of the Draft Law to avoid implying an abstract hierarchy of values (e.g., to avoid presumption that national security should be prioritised over human rights and public interest in all instances) that could create risks of undue interference with media freedom, and to emphasize the need to balance such values on a case-by-case basis. Accordingly, ensure that secrecy laws are precise, proportionate, and do not facilitate over-classification or suppression of information that is in the public interest.**

RECOMMENDATION J

To amend Article 5.1.3 of the Draft Law to emphasize that there is no hierarchy between the three values in the abstract and that they need to be balanced on a case-by-case basis and to ensure that secrecy laws are precise, proportionate, and do not facilitate over-classification or suppression of information that is in the public interest.

7.4.2. Confidentiality

130. Article 5.1.5 of the Draft Law requires that journalists "*show respect for legally protected confidentiality*" is ambiguous and could raise potential concerns depending on how it may be interpreted and applied in practice. The phrase itself is undefined, leaving uncertainty about what types of information fall within its scope. Without further clarification, the provision risks being interpreted in ways that disproportionately restrict freedom of expression and media freedom. One potential interpretation is that the provision aims to prohibit the disclosure of state secrets or classified information. However, even if this

174 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 30.
175 ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), para. 146.
176 See European Court on Human Rights, *Axel Springer AG v. Germany*, no. 39954/08, 7 February 2012, para. 79.
177 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 22: "*Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated*."

reflects the intended purpose, any such restriction must be carefully balanced against the right to freedom of expression, as guaranteed under Article 19 of the ICCPR. While limitations may be justified on grounds such as national security, they must comply with the requirements of legality, legitimacy, necessity and proportionality under international human rights law

131. In this respect it is noted that the UN Human Rights Committee emphasizes that the public's right to receive information is a critical component of Article 19 of the ICCPR, especially where the media serves a function of scrutinizing public authorities and contributing to democratic accountability.[178] Similarly, the ECtHR has recognized that the disclosure of confidential information may be protected under Article 10 of the ECHR where it contributes to a matter of public interest.[179] In such cases, the public's right to receive information carries significant weight, and any potential harm must be carefully balanced against this collective right to know, and sanctions must not discourage journalists from contributing to public discussion.

132. To prevent arbitrary interference and ensure adequate protection of journalistic freedom, **the Draft Law should be revised to define the scope of "legally protected confidentiality" with greater precision, or by cross-referencing relevant legislation, particularly where it may concern state secrets or classified information** (see also the comments above regarding "secret" information and over-classification). The current phrasing on the protection of confidential information is in itself not an issue, as this may in some cases be legitimate; however, the phrasing raises the risk that such protection may automatically take precedence over freedom of expression and the right to publish. It is not for the Draft Law to pre-emptively determine which of the afore mentioned competing interests should prevail. Instead, there should be a clear legal guidance that allows for a case-by-case assessment, based on the requirements of legality, necessity, and proportionality which any legitimate restriction of rights must satisfy under international human rights law. Such guidance should also include safeguards for public interest reporting and provide clear indication of the standards expected of journalists.

8. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING THE DRAFT LAW

133. 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). 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). The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline that "*all interested parties and stakeholders should have the opportunity to access the lawmaking process, be informed*

178 See UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 13.

179 See *Centre for Democracy and the Rule of Law v. Ukraine* (App. no. 10090/16, 26 March 2020), where the Court declared that 'whether and to what extent the denial of access to information constitutes an interference with an applicant's freedom-of-expression rights must be assessed in each individual case and in the light of its particular circumstances. Four criteria are relevant in this assessment: (i) the purpose of the information request; (ii) the nature of the information sought; (iii) the particular role of the seeker of the information in "receiving and imparting" it to the public; and (iv) whether the information sought is ready and available. In order for Article 10 to come into play, it must be ascertained whether the information sought was in fact necessary for the exercise of freedom of expression' (paras. 82-83). In another recent decision, the Court further found that 'The right of access to information would be deprived of its substance if the information provided by the competent authorities was insincere, inaccurate or even insufficient. … The effectiveness of this right therefore requires that, in the event of a dispute in this respect, the interested parties have a remedy enabling them to check the content and quality of the information provided, within the framework of an adversarial proceeding' *(Association Burestop 55 and Others v. France*, Apps. no. 56176/18, 56189/18, 56232/18 et al., 1 July 2021, para. 85).

about it and be able meaningfully to participate and contribute". 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.

134. 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. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the entire process, meaning not only when the draft is being prepared by relevant public authorities but also when it is discussed before Parliament (e.g., through the organization of public hearings).

135. In light of the above, the public authorities are encouraged to ensure that the current version of the Draft Law 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 sufficient time to submit their feedback. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Draft Law and its impact should also be put in place that would continuously evaluate the operation and effectiveness of the Draft Law, once adopted.

[END OF TEXT]