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A STUDY ON THE ACCESSIBILITY OF AUDIOVISUAL MEDIA SERVICES IN UKRAINE: COMPLIANCE OF THE LAW ON MEDIA WITH THE EU DIRECTIVE 2018/1808



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COMPLIANCE OF THE LAW ON MEDIA WITH THE EU DIRECTIVE 2018/1808**

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List of Abbreviations

AA/DCFTA	Association Agreement with the Deep and Comprehensive Free Trade Area
AVMSD	Audiovisual Media Services Directive
CFR	Charter of Fundamental Rights of the European Union
CNC	French National Centre for Cinema and Animation - Centre National du Cinéma et de l'Image Animée
CRPD	Convention on the Rights of Persons with Disabilities
EAA	European Accessibility Act
EAO	European Audiovisual Observatory
EBU	European Broadcasting Union
EPG	Electronic Programme Guide
ERGA	European Regulators Group for Audiovisual Media Services
EU	European Union
EUD	European Union of the Deaf
FRA	European Union Agency for Fundamental Rights
ICTs	Information and Communication Technologies
NRAs	National Regulatory Authorities and Bodies
NSTU	National Public Television and Radio Broadcasting Company of Ukraine
OPD	Organization of Persons with Disabilities
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
VOD	Video-on-demand
VSP	Video-sharing platforms
WAD	Web Accessibility Directive

Executive Summary

The political participation of persons with disabilities depends on a series of factors, one of which is the accessibility of political and public life. This requires that voting procedures, facilities as well as political meetings, materials of political parties or candidates are made accessible. In this context, audiovisual media services have become key instruments for citizens and political actors, including those with disabilities, to remain informed about elections, voting procedures, and the activities of a range of political stakeholders, including public administrations, local authorities, elected representatives and candidates.

Given the importance of this topic to engagement in all aspects of public life, this report will consider how Ukrainian legislation may facilitate the accessibility of audiovisual media services for persons with disabilities. This topic is especially timely as Ukraine has just recently adopted a new Law on Media in December 2022, which seeks to align with the legislation of the European Union (EU), namely the Audiovisual Media Services Directive (AVMSD). Revised in 2018, the AVMSD covers a number of other topics, including commercials, child protection, hate speech, European and independent works, regulatory authorities, or video-sharing platforms. More interestingly, it now encompasses more stringent obligations to make audiovisual media services accessible to persons with disabilities in all Member States.

The general compatibility of the Law on Media with the revised AVMSD has already been assessed, and this study considers the disability dimension of such alignment. To do so, it focuses on the extent to which the rights of persons with disabilities are considered and safeguarded therein, especially in terms of accessibility to audiovisual media services.

Disability is addressed at several junctures of the AVMSD, particularly in the context of hate speech prohibition, audiovisual advertisements, and regulations for video-sharing platforms. In that context, Article 7 AVMSD is a crucial provision for persons with disabilities as it addresses the accessibility of audiovisual media services. Article 7(1) AVMSD expressly calls on Member States to ensure, without undue delay, that audiovisual media services 'are made continuously and progressively more accessible to persons with disabilities through proportionate measures'. In addition, Article 7(2) AVMSD requires Member States to ensure that media service providers regularly report to their national regulatory authorities on the efforts made to improve the accessibility of their services. In turn, Member States are also required to report on the implementation of Article 7(1) AVMSD every three years to the European Commission. Article 7(3) AVMSD adds that Member States 'shall encourage media service providers to develop accessibility action plans', so that they can make their services more accessible. Furthermore, Article 7(4) AVMSD also calls on Member States to designate an online point of contact for providing information, as well as receiving complaints, on any of the accessibility issues addressed in Article 7 AVMSD. In addition, according to Article 7(5) AVMSD, public emergency information delivered through audiovisual media services, such as in natural disaster situations, must also be made accessible to persons with disabilities.

This study of the alignment of the Law on Media with the AVMSD has focused on the following points: the conceptualization of persons with disabilities; accessibility means; continuous and progressive obligations; exemptions and differentiated obligations; development of accessibility measures and action plans; reporting process; points of contact and emergency information.

One of the shortcomings of the Law of Media is that, while it refers broadly to persons with disabilities in the text, with regards to accessibility obligations it mainly refers to those with sensory disabilities. In doing so, it fails to cover individuals who may benefit from making the audiovisual media services more accessible, including, for instance, persons with intellectual disabilities. Consequently, the Law on Media refers mostly to subtitling, audio description, and sign language interpretation – a range of accessibility means also foreseen in the preamble to the AVMSD. However, it does not mention the use of spoken subtitles or simple or easy-to-read language.

With regard to those accessibility obligations, the AVMSD does not set out quantitative requirements to make audiovisual media services accessible, and only states that services should be made ‘continuously and progressively more accessible’. In that context, it has been common for Member States to impose such requirements in transposing the AVMSD. The Law on Media amends the ‘Law on Public Media in Ukraine’ and introduces some quantitative obligations on accessibility with regard to the National Public Television and Radio Company of Ukraine. However, current legislation does not indicate whether such quotas will be revised and increased over the years, nor how regularly. In that sense, the Law on Media fails in approximating Article 7(1) AVMSD, as the latter explicitly indicates that audiovisual media services should be made continuously and progressively more accessible. In this regard, the Law on Media provides accessibility obligations that explicitly apply to the public audiovisual media service provider. However, no such legally binding obligations are imposed on private audiovisual media service providers or on-demand service providers.

To develop general accessibility obligations so that persons with disabilities can access audiovisual content, the Ukrainian Law on Media introduces a co-regulation procedure. It therefore calls for the development of an action plan to ensure the accessibility of services for persons with disabilities, although this was only suggested in Article 7(3) AVMSD, which is an encouraging step.

As mentioned prior, Article 7(2) AVMSD touches upon reporting obligations, and provides that Member States shall ensure that media service providers report on a regular basis to NRAs on the implementation of accessibility measures. The Law on Media indicates that audiovisual media providers are obliged to submit a report to the National Council on Television and Radio Broadcasting of Ukraine (National Council) every three years. Additionally, under Article 7(4) AVMSD, Member States must designate a point of contact providing information and receiving complaints on accessibility of audiovisual media services. In this regard, the Law on Media indicates that every user has the right to submit appeals and obliges the National Council to create an effective mechanism on its official website for submitting appeals regarding the accessibility of services provided by audiovisual media providers for persons with disabilities. In that respect, the Law on Media seems in line with Article 7(4) in so far as it sets up a complaint mechanism.

Finally, in terms of emergency information and Article 7(5) AVMSD, the Law on Media states that linear media providers must ensure the accessibility of official announcements during emergencies through sign language, subtitles, and audio description, among other means. The Law on Media is further complemented in this respect by various legislation and rules, including the Civil Protection Code of Ukraine, or the Regulation on the Organization of Warning about the Threat of or Occurrence of Emergencies and the Organization of Communication in the Civil Protection Sphere.

Overall, this research has found that the Law on Media partially aligns with the AVMSD in covering the accessibility of audiovisual media services. In that respect, several points of non-alignment are highlighted in this study and recommended to be addressed. Additionally, as the AVMSD is a minimum harmonization directive, particular attention should be devoted to making sure that the Law on Media also complies with the CRPD and its interpretation by the CRPD Committee – as the CRPD represents the international legal standard on the rights of persons with disabilities.

1. Introduction

The effective political participation of persons with disabilities hinges on several factors, including the accessibility of political and public life.¹ This requires that voting procedures, facilities, and materials are appropriate, accessible, and easy to understand and use. Likewise, political meetings and the materials of political parties or candidates must be accessible, and it is equally important that persons with disabilities are able to carry out political mandates in a fully accessible manner.² Nowadays, many citizens rely on audiovisual media services to stay informed about elections, voting procedures, and the activities of various political stakeholders, including public administrations, local authorities, elected representatives, and candidates. Equally, as they enable access to information, accessible audiovisual media services are instrumental to the more ‘active’ participation of persons with disabilities in public and political life, meaning as candidates, elected officials or mandate holders. Ensuring that these services are accessible to all, including to persons with disabilities, is therefore crucial to achieving equal participation in political life and enabling persons with disabilities to effectively exercise their political rights.

At the level of the European Union (EU), accessibility represents an essential dimension of the rapidly growing field of EU disability law. Enjoying a ‘shared, yet general and cross-cutting, competence in the area of accessibility’³, the EU has recently enacted new legislation on the matter – like the European Accessibility Act (EAA)⁴ and the Web Accessibility Directive (WAD)⁵ – while it also revised existing laws, including the Audiovisual Media Services Directive (AVMSD)⁶ in 2018. The recent amendment of the AVMSD⁷ particularly bolstered the obligations to make audiovisual media services accessible to persons with disabilities in all Member States. As EU directives are not directly applicable at the national level, Member States have since had to transpose the revised AVMSD into national legislation, leading to a range of new accessibility obligations for media service providers across the EU. Additionally, the AVMSD is a minimum harmonization directive, meaning that it leaves space for Member States to establish more detailed or stricter rules – in compliance with EU law – for media service providers to comply with, including in terms of accessibility. In that sense, Ukraine also remains free to apply more comprehensive and stringent accessibility obligations as it aligns its legislation with the EU.

1 See on this topic, European Union Agency for Fundamental Rights (FRA), ‘Political Participation of People with Disabilities: New Developments’ (Publications Office 2024) <<https://fra.europa.eu/sl/publication/2024/political-participation?page=3&pid=573ba38b-48a4-429a-ac57-103e7cce684c#>> accessed 24 August 2024.

2 CRPD Committee, ‘General Comment No. 2 (2014) Article 9: Accessibility’ (United Nations 2014) CRPD/C/GC/2 para 43.

3 Delia Ferri, ‘The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All About That ... Internal Market?’ (2023) 48 *European Law Review* 257, 258.

4 Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (European Accessibility Act) [2019] OJ L151/70.

5 Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Web Accessibility Directive) [2016] OJ L 327/1.

6 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 (AVMSD) [2010] OJ L95/1.

7 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 provis[2018] OJ L303/69.

Incidentally, these changes in the EU regulatory framework also prompted the update of the Ukrainian media legislation. Prior to being granted candidate status in 2022 and the start of the accession negotiations with the EU in 2024, Ukraine had, in fact, already committed to approximate its legislation to that of the EU.⁸

Indeed, under the EU–Ukraine Association Agreement, including the Deep and Comprehensive Free Trade Area (AA/DCFTA) concluded ten years ago, Ukraine is bound to align its legal system – meaning laws, rules, and procedures – with the EU’s laws and standards (EU *acquis*). With this agreement encompassing the AVMSD, Ukraine, therefore, undertook to revise its media legislation to ensure it aligned with the EU *acquis*. Indeed, despite numerous revisions, the previous Ukrainian legislation remained outdated and failed to align with the EU standards on audiovisual media services as laid out in the AVMSD. In December 2022, a new Law Media was finally adopted⁹, and encompassed, among other things, provisions on the accessibility of audiovisual media services for persons with disabilities. The timely and effective implementation of the new Law on Media and any other measure transposing the AVMSD therefore contribute to the advancement of accession negotiations.

Aim

Although the general compatibility of the Law on Media with the revised AVMSD has already been assessed in other contexts¹⁰, this study considers the disability dimension of such alignment in detail. Therefore, this research aims to assess whether and how the Law on Media aligns with the AVMSD regarding disability provisions. In doing so, it especially focuses on the extent to which the rights of persons with disabilities are considered and safeguarded therein, particularly regarding accessibility to audiovisual media services. Additionally, it seeks to highlight whether both pieces of legislation comply with the United Nations Convention on the Rights of Persons with Disabilities (CRPD)¹¹. Finally, the study provides recommendations for policymakers and other stakeholders on measures and actions to ensure better access to audiovisual media services by people with disabilities.

8 [Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part \[2014\]](#) OJ L161/3, art 397.

9 [Law on Media of Ukraine 2849-20](#) of 13 December 2022.

10 Council of Europe, ‘Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department Prepared on the Basis of the Expertise by Council of Europe Experts: Eve Salomon and Tanja Kerševan on The Law “On Media” of Ukraine’ (2023) DGI (2023)03.

11 United Nations Convention on the Rights of Persons with Disabilities (CRPD) (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

Notably, this study refers primarily to ‘persons with disabilities’, in line with the approach of the CRPD¹² and EU bodies.¹³ Yet, the challenges made to person/people-first language – ‘person/people with disabilities’ – and the support for an identity-first approach – ‘disabled person/people’ – are acknowledged.¹⁴ The terms ‘disabled persons/people’ may be used when relevant, to avoid repetition or to convey, for instance, the chosen terminology of the authors cited.

Structure

This study is structured into seven sections. Following the introduction, Section 2 briefly discusses the concept of accessibility, outlines the relevant EU and international legal context, and provides the background to the revised AVMSD. Section 2 then provides a general overview of the AVMSD, discussing its scope and main provisions, before addressing the way disability features in the AVMSD. After considering the AVMSD’s disability provisions, and particularly those accessibility obligations, a third section considers how accessibility obligations have been transposed and implemented across EU Member States and highlights interesting practices adopted by some. The fourth section focuses on the new Ukrainian Law on Media and discusses its disability-inclusive provisions, particularly those on accessibility. Furthermore, Section 5 assesses the compatibility of the accessibility provisions of the Law on Media with the AVMSD. It highlights the alignment of both and the gaps in the Ukrainian legislation that have not been completely addressed or remain to be addressed. Before providing some concluding remarks, Section 6 then offers recommendations to Ukrainian stakeholders to both ensure compatibility with the AVMSD and to protect and fulfill the rights of persons with disabilities, particularly when it comes to ensuring access to audiovisual media services.

12 Tom Shakespeare, *Disability Rights and Wrongs Revisited* (2nd edn, Routledge 2014) 19

13 European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region: Union of Equality Strategy for the Rights of Persons with Disabilities 2021-2030’ (2021) COM/2021/101 final.

14 Giacomo Vivanti, ‘Ask the Editor: What Is the Most Appropriate Way to Talk About Individuals with a Diagnosis of Autism?’ (2020) 50 *Journal of Autism and Developmental Disorders* 691, 692.

2. Context and Background on Accessibility and the AVMSD

2.1. Understanding Accessibility

As previously highlighted, accessibility is a key factor in the inclusion of persons with disabilities in society, and it has only recently been recognized in international human rights law.¹⁵ As such, it features prominently in the CRPD, including as a principle in Article 3 CRPD, which provides a standard for States Parties to evaluate their domestic legislation, and in a dedicated article, Article 9 CRPD, which recognizes the right to accessibility.¹⁶ Furthermore, Article 9 CRPD must be understood in conjunction with other CRPD provisions. Notably, the right to access (accessible) audiovisual content is most concretely expressed in two other articles of the CRPD:

- **Article 21 CRPD on Freedom of Expression and Opinion, and Access to Information**, which calls on States Parties to ensure that persons with disabilities have the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice;
- **and Article 30 CRPD on Participation in Cultural Life, Recreation and Sport**, which explicitly requires States Parties to recognize the right of persons with disabilities to take part in cultural life and to take, in that sense, all appropriate measures to ensure that persons with disabilities can enjoy, among others, access to cultural materials, television programs, or films in accessible formats.¹⁷

In this context, the CRPD Committee emphasizes that the doctrine of progressive realization governs Article 9 CRPD on Accessibility, requiring States Parties to implement accessibility measures *gradually yet steadily*.¹⁸ Additionally, the CRPD Committee asserts that accessibility must be treated as an *unconditional obligation*, allowing no exception, even on the basis of undue burden.¹⁹

Moreover, as a precondition to exercising the rights recognized under the CRPD, accessibility contributes to enabling ‘persons with disabilities to live independently and participate fully in all aspects of life’.²⁰ Although it is closely connected to and effectively underpins the implementation of every provision of the Convention, including the right to participate in political and public life, neither the CRPD nor the CRPD Committee has defined accessibility.

Indeed, accessibility is a multidimensional and complex notion. As such, it encompasses social or attitudinal accessibility, economic accessibility or affordability, physical accessibility,

15 Anna Lawson, ‘Article 9: Accessibility’ in Ilias Bantekas, Dimitris Anastasiou and Michael Ashley Stein (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 259.

16 Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases, and Materials* (Cambridge University Press 2019) 131 et. seq.

17 Art 30(1)(a) and (b) CRPD.

18 CRPD Committee, ‘General Comment No. 6 (2018) on Equality and Non-Discrimination’ (United Nations 2018) CRPD/C/GC/6 para 41(a).

19 *ibid.*

20 Art 9(1) CRPD.

information accessibility, and communication accessibility.²¹ In this context, it is helpful to highlight a few facets of this concept, as some are especially relevant to this study:

- **Social or attitudinal accessibility** requires addressing the stigmatization and other negative behavior experienced by persons with disabilities, such as prejudicial attitudes and discrimination, particularly through education, awareness-raising actions, and communication;²²
- **Physical accessibility** means that persons with disabilities can access ‘all physical environments, including facilities, goods, and services ... with or without assistance’. It encompasses the availability of accessible facilities, goods, and services, their usability, safety, and user-friendliness;²³
- **Information accessibility** refers to information about facilities, goods, and services, including on their accessibility to be made available to all;²⁴
- By contrast, **communication accessibility** refers to ‘the supply of information in alternative modes and means of communication, such as Braille, big print and audio, and for all types of persons with disabilities’²⁵.

In practice, these dimensions are not completely autonomous, and information accessibility is particularly intertwined with communication accessibility.²⁶ **For instance, what distinguishes information accessibility from communication accessibility is that the first concerns ‘the content of the information that a person with disabilities is entitled to receive’ while the latter refers to the format in which the information is provided.**²⁷ In the same vein, legislation like the AVMSD and the Ukrainian Law on Media, for instance, often addresses more than just one dimension of accessibility indiscriminately, especially as those are closely connected and interlinked.

Overall, the CRPD, to which both Ukraine²⁸ and the EU are parties, serves as a crucial international legal standard against which to assess the accessibility provisions outlined in the AVMSD, and Ukraine’s implementation of accessibility measures for the audiovisual sector following the adoption of the new Law on Media.

21 Stylianos Charitakis, ‘Access Denied: The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities’ (Maastricht University 2018) 25–31 <[https://cris.maastrichtuniversity.nl/portal/en/publications/access-denied\(3cc186cd-9b97-4ab9-8db6-547d8ea3f7e8\).html](https://cris.maastrichtuniversity.nl/portal/en/publications/access-denied(3cc186cd-9b97-4ab9-8db6-547d8ea3f7e8).html)> accessed 18 June 2024.

22 *ibid* 25–26.

23 *ibid* 28–29.

24 *ibid* 29–30.

25 *ibid* 30.

26 Ferri (n 3) 262.

27 Charitakis (n 21) 30–31.

28 On 16 December 2009, Ukraine ratified the CRPD and its Optional Protocol through Law No. 1767-VI.

2.2. The Revised AVMSD and EU Accessibility Legislation

In this context, the EU's ratification of the CRPD in 2010²⁹ sparked a renewed interest in disability law and even 'served as catalyst for more disability-related legislation in the field of accessibility'.³⁰ In a rapidly changing world, where digital technologies evolve constantly, there has been increasing recognition at the EU Level of the importance of accessibility to persons with disabilities including accessible information and communication technologies (ICTs).³¹ Therefore, although the division of competences with Member States is particularly complex, accessibility has emerged as a key focus of the EU, and significant legal developments have occurred since then. To comply with its obligations under the CRPD, particularly in terms of accessibility of goods and services, the EU has concretized significant initiatives, with the adoption of new measures such as the EAA or the revision of existing ones, like the AVMSD in 2018.

In fact, from the early 2000s, the EU regulatory framework had increasingly adapted to the 'expanding digital universe', leading to the adoption of a range of key measures addressing the accessibility of goods and services, ICTs, and access to information – all instrumental to achieving autonomy for persons with disabilities.³² Indeed, in recent decades, the audiovisual media ecosystem has undergone significant transformation, and globalization has greatly influenced the evolution of audiovisual production and distribution. Platforms like Netflix, Amazon Prime, and YouTube have reshaped the audiovisual media landscape, prompting the European Union to revise the AVMSD in 2018 in order to address these changes. With this revised AVMSD, the EU combines a 'unique blend' of sector-specific concerns, which seeks to balance 'risks to freedom of expression with important consumer protections', and protection measures for national media industries essential to Member States' political and cultural life.³³ In 'updating the regulatory mechanisms for the audiovisual services [which were] profoundly disturbed by the digital context',³⁴ the EU also strengthened audiovisual media services' obligations to make their services accessible to people with disabilities. Prior to that, accessibility to people with disabilities was certainly not a central concern, contrary to promoting European audiovisual production and consumer protection.

As such, the AVMSD must be understood within a larger, albeit fragmented, EU accessibility framework. Indeed, the accessibility of audiovisual media services is particularly 'boosted by the synergy between the AVMSD and other EU legal sources such as the European Accessibility Act',³⁵ which applies, for instance, to consumer terminal equipment used for accessing

29 Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2009] OJ L23/35.

30 Janina Arsenjeva, 'Annotated Review of European Union Law and Policy with Reference to Disability' (Prepared under the direction of Professor Lisa Waddington, on behalf of the European Disability Expertise (EDE) – European Commission 2024) 12 <<https://ec.europa.eu/social/BlobServlet?docId=27622&langId=en>>.

31 *ibid* 14.

32 Janina Arsenjeva, 'Annotated Review of European Union Law and Policy with Reference to Disability' (Prepared under the direction of Professor Lisa Waddington, on behalf of the European Disability Expertise (EDE) – European Commission 2024) 14 <<https://ec.europa.eu/social/BlobServlet?docId=27622&langId=en>>.

33 Sally Broughton Micova, 'The Audiovisual Media Services Directive' in Pier L Parcu and Elda Brogi (eds), *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing 2021) 264.

34 Elsa Costa E Silva and Mariana Lameiras, "'If You Can't Beat Them...': AVMSD Policy-Making for Portuguese Audiovisual Production in the Context of the Small Markets and of Multistakeholderism' (2022) 28 *International Journal of Cultural Policy* 715, 717.

35 Vincenzo Tudisco, 'Accessibility of Audiovisual Media Services for Persons with Disabilities in the European Union: Lights and Shadows of the Audiovisual Media Services Directive' (2022) 6 *STALS Research Papers* 1, 4.

audiovisual media services.³⁶ **In fact, the EAA requires a range of products and services to be made accessible for persons with disabilities by 28 June 2025.** It covers several mediums such as websites, mobile applications, or ‘related media players as well as connected television services’,³⁷ which concern audiovisual media service providers including public and private television broadcasters and video-on-demand (VOD) providers. In that context, it is interesting to point out that, while covering services such as electronic communication services and services providing access to audio-visual media services,³⁸ the EAA also insists in its preamble on the ‘need for concerted action’ to guarantee that access to audiovisual media services is fully available to persons with disabilities.³⁹ In that vein, the EAA specifies that ‘access to audiovisual media services should mean that the access to audiovisual content is accessible, as well as mechanisms that allow users with disabilities to use their assistive technologies’.⁴⁰ Therefore, the accessibility provisions of the newly adopted EAA are ‘giving rise to different and layered accessibility obligations’ for media service providers, which must be combined with those spelled out in the AVMSD.⁴¹

The AVMSD must also be understood in connection with several additional EU directives and provisions that complement it,⁴² including Article 5 of the Infosoc Directive on permitted exceptions and limitations to copyright,⁴³ the Digital Services Act⁴⁴ and the WAD. In that context, it is interesting that the WAD – an EU Directive aimed at ensuring the accessibility of public sector bodies’ websites and mobile applications – does not apply to public service broadcasters’ websites and mobile applications. Instead, it was deemed more appropriate to address the accessibility of audiovisual media services in a dedicated law encompassing both public and private broadcasters⁴⁵ like the EAA.⁴⁶

36 Art 2(1)(d) EAA.

37 Tudisco (n 35) 11.

38 Stelios Charitakis, ‘Accessibility of Goods and Services’ in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar Publishing 2020) 236.

39 Preamble recital 11 EAA.

40 Preamble recital 31 EAA.

41 Ferri (n 3) 268.

42 Mark D Cole and Christina Etteldorf, ‘Research for CULT Committee – Implementation of the Revised Audio-visual Media Services Directive’ (European Parliament, Policy Department for Structural and Cohesion Policies 2022) 9.

43 Consolidated Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (Infosoc Directive) [2001] OJ L167/10.

44 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L 277/1.

45 Preamble recital 23 WAD.

46 Art 2(2)(b) EAA.

3. The Audiovisual Media Services Directive and the Rights of Persons with Disabilities

3.1. General Overview

3.1.1. Scope

The current text of the AVMSD is the outcome of important revisions carried out in 2018 as part of the EU Digital Strategy,⁴⁷ which saw the 2010 AVMSD significantly amended to adapt expressly to changing market realities. The revised AVMSD now embodies the main media and cultural policy tool of the EU and governs an EU-wide coordination of Member States' regulatory frameworks on the provision of audiovisual media services. It aims to establish and maintain a well-functioning single market for audiovisual media services across the EU while also promoting cultural diversity and ensuring adequate protection for consumers and children.

Adopting a largely 'technology-neutral approach' in outlining its scope⁴⁸, the revised AVMSD applies to audiovisual media services, including linear ones like traditional television broadcasts, and non-linear services like on-demand audiovisual media services (e.g. Netflix or Prime). Article 1 AVMSD defines these services as those providing programs under the editorial responsibility of media providers 'to the general public, in order to inform, entertain, or educate by means of electronic communications networks'.⁴⁹

One of the major changes introduced in 2018 was the expansion of the AVMSD's material scope to include a range of new media services, including Internet services hosting user-generated content and referred to as video-sharing platform (VSP) services in the revised AVMSD. This was seen as a necessary update to keep up with developments in terms of viewing habits or technology, and particularly to combat hate speech and protect minors from harmful content. Notably, Article 1 AVMSD characterizes video-sharing platform services as services providing programs, user-generated videos, or both, for which the provider does not hold editorial responsibility and that serve an informative, entertaining, or educational purpose.⁵⁰ As such, platforms like Youtube or TikTok fall under the scope of the Directive, as well as '[a]udiovisual content shared on social media services, such as Facebook'.⁵¹

However, social media services remain generally excluded from the scope of the Directive, except when providing programs and user-generated videos is considered one of their essential functionality, as indicated in Recital 5 AVMSD 2018. This inclusion is particularly justified by general public interests. Indeed, social media services have come to play a key role in democratic societies,⁵² and Recital 4 AVMSD 2018 underlines how they have 'become an

47 Commission, 'A Digital Single Market Strategy for Europe' (Communication) COM(2015) 192 final.

48 Peggy Valcke and Ingrid Lambrecht, 'The Evolving Scope of Application of the AVMS Directive' in Pier L Parcu and Elda Brogi (eds), *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing 2021) 282.

49 Art 1(1)(a)(i) AVMSD.

50 Art 1(1)(aa) AVMSD.

51 Valcke and Lambrecht (n 48) 294.

52 European Parliament, 'Resolution of 3 May 2018 on media pluralism and media freedom in the European Union' (2017/2209(INI) 2018).

important medium to share information and to entertain and educate, including by providing access to programmes and user-generated videos’.

3.1.2. Main provisions

The revised AVMSD is a key element of EU disability law and represents a significant milestone in accessibility and EU audiovisual cultural policy.⁵³ However, unlike other pieces of EU disability accessibility legislation – such as the WAD or the EAA – the AVMSD stands out as it is not fully dedicated to addressing accessibility for persons with disabilities. Instead, the AVMSD is a sector-specific legislation that includes accessibility obligations for audiovisual media services. It exerts to preserve a ‘delicate balance between a liberalizing economic approach and member states’ concerns stemming from the cultural and social function of audiovisual media services’.⁵⁴

Overall, the AVMSD is underpinned by the country-of-origin principle. This principle helps determine the jurisdiction responsible for audiovisual media services⁵⁵, meaning that ‘services are regulated in their country of origin, not their country of destination’.⁵⁶ Article 3 AVMSD also states that Member States must ensure freedom of reception and may not restrict audiovisual media transmissions from other Member States.

Article 4(1) AVMSD recalls that the AVMSD is a minimum harmonization Directive, which entails that Member States may be free to establish more detailed or stricter rules in compliance with EU law for media service providers under their jurisdictions to comply with. Therefore, the functioning of the audiovisual market cannot be fully harmonized even after Member States have transposed the AVMSD. This generally leaves Member States with a certain margin of interpretation⁵⁷, but also creates ‘a range of grey areas that may de facto lead to uneven access across the EU’.⁵⁸ Section 3.3. of this study, on the National Implementation of Article 7 AVMSD, looks in more detail at the ways Member States have transposed accessibility obligations for audiovisual media services.

Besides accessibility of audiovisual media services, the AVMSD also legislates on a number of additional topics, including audiovisual commercial communications, child protection, hate speech, the promotion of European and independent works, the establishment of regulatory authorities, or the rules applicable to video-sharing platforms.

53 Silva and Lameiras (n 34) 715.

54 Broughton Micova (n 33) 277.

55 Art 2 AVMSD.

56 Broughton Micova (n 33) 270.

57 Valcke and Lambrecht (n 48) 302.

58 Tudisco (n 35) 5.

● **Audiovisual commercial communications**

The AVMSD provides that audiovisual commercial communications must abide by a range of criteria, and for instance, shall not prejudice respect for human dignity nor include or promote discrimination⁵⁹. Among a range of restrictions, Article 9(1) AVMSD also bans certain audiovisual commercial communications. After 2018, several provisions have also been enhanced to better protect children from certain content, including on video sharing platforms.⁶⁰

● **European and independent works**

In addition, the AVMSD also aims to promote more broadly the distribution and production of European and independent works and therefore recognizes ‘the importance of audiovisual for cultural identity’⁶¹ and cultural diversity.⁶² As such, Member States must ensure that television broadcasters reserve a majority of transmission time for European works⁶³, and at least 10% of their transmission time or programming budget for independent European works⁶⁴. Article 13 AVMSD also extends quota obligations on European works to on-demand audiovisual media services providers.

● **Video-sharing platforms**

As previously noted, the 2018 revision of the AVMSD extended various obligations to video-sharing platforms, including on child protection, hate speech or advertising⁶⁵, though it subjected VSPs to a more light-touch regime than audiovisual media services. This distinction is justified by their lack of editorial responsibility over the user-generated content and programs that platforms host, unlike more traditional media sources⁶⁶. However, the AVMSD clarifies that these platforms are still ‘responsible on the basis of their organisation of content in the form of hosting, tagging, displaying and sequencing’.⁶⁷

● **Regulatory authorities and bodies**

Lastly, the AVMSD incorporates a range of detailed measures on national regulatory authorities and bodies (hereinafter NRAs), which nowadays have particular ‘implications for freedom of expression’ and the pluralism of the media⁶⁸. As provided by Article 30 AVMSD, Member States have to designate one or more national regulatory authorities, bodies, or

59 See Art 9(1) AVMSD.

60 Arts 6a, 9 and 28b AVMSD.

61 Silva and Lameiras (n 34) 718.

62 Mira Burri, ‘Business as Usual? The Implementation of the UNESCO Convention on Cultural Diversity and EU Media Law and Policies’ (2013) 38 *European Law Review* 805, 817.

63 Art 16 AVMSD.

64 Art 17 AVMSD.

65 Art 28b AVMSD.

66 Valcke and Lambrecht (n 48) 283.

67 Broughton Micova (n 33) 278.

68 *ibid* 277.

both, which are responsible for overseeing audiovisual media services. Member States must guarantee that they can exercise their powers impartially and transparently, as well as in line with the AVMSD's objectives, which include media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition.⁶⁹ The attention dedicated to the independence of NRAs signals 'a tacit acknowledgement that the independent and efficient regulatory bodies required to deal with the ever more complex media environment were not in place in all member states'.⁷⁰

The AVMSD also set up the European Regulators Group for Audiovisual Media Services (ERGA), which is composed of representatives of the national authorities and bodies⁷¹, and aimed to directly advise on audiovisual matters and to facilitate co-operation and exchange of best practices among the national regulators⁷², including on accessibility⁷³. Following the recent adoption of the European Media Freedom Act, it is being replaced by the European Board for Media Services.⁷⁴

3.2. Protecting the Rights of Persons with Disabilities in the AVMSD

3.2.1. Conceptualization of Persons with Disabilities

Most notably, the AVMSD refers explicitly to the CRPD in its preamble, as Recital 22 AVMSD 2018 stresses that 'ensuring the accessibility of audiovisual content is an essential requirement in the context of the commitment taken under' the Convention. It also emphasizes the right of persons with disabilities to take part and 'be integrated in the social and cultural life' of the EU. However, as this study will highlight, it also seems to follow a contested understanding of persons with disabilities, especially in the context of the AVMSD's accessibility obligations.

Prior to being amended in 2018, the AVMSD expressly referred to making services accessible to 'people with a visual or hearing disability'⁷⁵. This language has since been replaced by the more generic notion of 'persons with disabilities'. In this context, the revised AVMSD further indicates that 'the term "persons with disabilities" should be interpreted in light of the nature of the services covered by that Directive, which are audiovisual media services'⁷⁶. Recital 22 AVMSD 2018, albeit non-binding and therefore merely indicative, further specifies that Member States must work on ensuring that media service providers work on making their content accessible 'to persons with disabilities, in particular with a visual and hearing impairment'. This emphasis on individuals with visual and hearing impairments is even more

69 Art 30(2) AVMSD.

70 Broughton Micova (n 33) 277.

71 Art 30b AVMSD.

72 European Commission, 'Commission Decision of 3.2.2014 on establishing the European Regulators Group for Audiovisual Media Services' (2014) C[2014] 462 final.

73 Art 30b(3)(b) AVMSD.

74 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) [2024] OJ L2024/1083, Chap III sec 2.

75 Art 7 AVMSD 2010.

76 Preamble recital 22 AVMSD 2018.

pronounced as Recital 22 AVMSD 2018 further suggests that Member States should require media services to regularly report on their progress ‘in making their services progressively accessible to people with visual or hearing disabilities’. This is reinforced in Recital 23 AVMSD 2018, which mentions – although not exhaustively – various accessibility tools for making content accessible, most of which are dedicated to persons with hearing and visual disabilities.

Although the main text of the AVMSD was amended to refer more broadly to persons with disabilities, it seems that the Directive still predominantly favors those with sensory disabilities. While it is understandable that the audio and visual nature of such services may appear more relevant for persons with visual and hearing impairments, such emphasis and wording in the preamble – though not in the main text of the AVMSD – hints to a more restricted perspective from the EU legislator. In this respect, the AVMSD even ‘seems to allude to a definition which is narrower than the conceptualisation proffered by the CRPD’⁷⁷, as it has already done so in the context of other EU legislation⁷⁸. In addition, such limited understanding further risks excluding individuals with disabilities from benefiting from the AVMSD, and overlooks the accessibility needs of individuals with other disabilities, such as persons with intellectual disabilities who may require accessibility measures like simple/easy-to-read language in order to access audiovisual content.

3.2.2. Article 7 AVMSD on the Accessibility of Audiovisual Media Services

As mentioned, Article 7 AVMSD has been thoroughly amended after 2018. On the one hand, it now refers to ‘persons with disabilities’ and not just ‘people with a visual or hearing disability,’ meaning that today’s accessibility measures are broader in scope and type’.⁷⁹ On the other hand, the amended AVMSD also addresses the ‘arguably weak language’ of the 2010 AVMSD⁸⁰, and definitely bolsters the obligation to make audiovisual media services, including emergency services, accessible for persons with disabilities.

Indeed, following this semantic change, rather than asking Member States to encourage media service providers to make their services accessible to individuals with visual or hearing disabilities, Article 7(1) AVMSD now calls on Member States to ensure, without undue delay, that audiovisual media services ‘are made continuously and progressively more accessible to persons with disabilities through proportionate measures’. As such, it adopts a much more assertive approach and introduces a clear obligation on media service providers to make their services accessible to persons with disabilities, including emergency services⁸¹, when it was only optional prior. However, the accessibility obligations introduced in Article 7 AVMSD apply only to television broadcasts and video-on-demand services, and do not extend to video-sharing platforms, which implies that content shared on platforms like TikTok, YouTube, or Dailymotion may not be accessible.

77 Tudisco (n 35) 14.

78 See Lisa Waddington, ‘Saying All the Right Things and Still Getting It Wrong: The Court of Justice’s Definition of Disability and Non-Discrimination Law’ (2015) 22 *Maastricht Journal of European and Comparative Law* 576, 584–585.

79 European Audiovisual Observatory, ‘Accessibility Measures as Implemented by AVMS Providers for Persons with Disabilities’ (2023) foreword.

80 Broughton Micova (n 33) 273.

81 Art 7(5) AVMSD.

At the same time, Recital 23 AVMSD 2018 makes it clear that the AVMSD does not cover ‘features or services providing access to audiovisual media services, nor does it cover accessibility features of electronic programme guides (EPGs)’, as it is covered in the EAA⁸². It further indicates that the AVMSD ‘is without prejudice to Union law aiming to harmonise the accessibility of services providing access to audiovisual media services, such as websites, online applications and EPGs, or the provision of information on accessibility and in accessible formats’.⁸³

Overall, in addition to becoming stricter, Article 7 AVMSD has also become more detailed. First, it stipulates that media services providers must make their services continuously and progressively more accessible to persons with disabilities without delay. In that respect, it is interesting that the CRPD Committee has explicitly stated that Article 9 CRPD on Accessibility is subject to progressive realization and must be implemented gradually but unconditionally.⁸⁴ The Treaty body also emphasized that ‘[b]arriers should be removed in a continuous and systematic way, gradually yet steadily’⁸⁵. In that connection, the accessibility obligation put forward in Article 7(1) AVMSD seems to align ‘with the nature of accessibility under the CRPD’⁸⁶. However, the reference to proportionality – with the mention of ‘proportionate measure’ – may appear unusual given that Article 7(1) AVMSD is otherwise framed as rather unconditional. Although ‘technological limits and costs could be considered’, it is important to emphasize that these cannot justify the denial of accessibility.⁸⁷

Article 7 AVMSD also incorporates a range of additional obligations designed to support the implementation of Article 7(1) AVMSD. In this respect, Article 7(2) AVMSD specifically requires Member States to ensure that media service providers regularly report to NRAs on the efforts made to improve the accessibility of their services, which seems in line with the CRPD’s emphasis on the monitoring of accessibility standards⁸⁸. In turn, Member States are also required to report on the implementation of Article 7(1) AVMSD every three years to the Commission⁸⁹. Article 7(3) AVMSD adds that Member States ‘shall encourage media service providers to develop accessibility action plans’, so that they can make their services more accessible. However, as the softer wording suggests, this is not an obligation. Furthermore, Article 7(4) AVMSD also requires that Member States designate an online point of contact for providing information and receiving complaints on any of the accessibility issues addressed in Article 7 AVMSD.

In addition, according to Article 7(5) AVMSD, public emergency information delivered through audiovisual media services, such as in natural disaster situations, must also be made accessible to persons with disabilities. However, Recital 24 AVMSD 2018 alludes to a possible exception, noting that ‘while exceptional cases should not prevent emergency information from

82 European Commission, ‘Reporting on the Application of Directive 2010/13/EU “Audiovisual Media Services Directive” as Amended by Directive (EU) 2018/1808, for the Period 2019-2022’ (Staff Working Document 2024) SWD(2024) 4 final 9.

83 Preamble recital 23 AVMSD 2018.

84 CRPD Committee (n 18) para 41(a).

85 CRPD Committee (n 2) para 27.

86 Tudisco (n 35) 16.

87 *ibid* 17.

88 *ibid*.

89 Art 7(2) AVMSD.

being made public through audiovisual media services', it might not always be possible to provide such information in an accessible format.

Interestingly, the EU legislator does not establish specific accessibility targets for Member States, whether qualitative or quantitative, as it would have done in relation to promoting European works, for instance. However, it mentions Recital 23 AVMSD 2018 different means to achieve the accessibility of audiovisual media services under the AVMSD, which include but are not limited to:

- **sign language**⁹⁰
- **subtitling** for the deaf and hard of hearing⁹¹
- **spoken subtitles** or audio subtitles⁹²
- **audio description**⁹³

While not exhaustive, what the Directive envisions as 'main access services' conveys, once again, its emphasis on making audiovisual content accessible primarily for blind and visually impaired individuals, through audio description and spoken subtitles, as well as for deaf and hard of hearing people, through subtitles and sign language interpretation.

Overall, the changes brought to Article 7 AVMSD in 2018 are significant and welcomed. While recognizing this progress, civil society, and especially European Organizations of Persons with Disabilities (OPDs), also highlighted a range of shortcomings arising in particular from the broad formulation of those accessibility obligations⁹⁴. In this context, OPDs particularly criticized the exclusion of social media services and video-sharing platforms from the scope of Article 7 AVMSD and pointed to the lack of consultation with organizations of persons with disabilities during the development and implementation of these measures⁹⁵. Additionally, the lack of a specific percentage of content that must be made accessible to persons with disabilities⁹⁶, along with the absence of tools to measure progress, such as key performance indicators (KPIs) or accessibility standards⁹⁷, were seen as posing a significant challenge to improving the accessibility of audiovisual media content across the EU. This was highlighted as the cause of discrepancies among Member States, with quantitative obligations varying from one country to another⁹⁸, and limited availability of audio description or audio subtitling

90 In this respect, see Francisco Javier Cabrera Blázquez and others, 'Accessibility of Audiovisual Content for Persons with Disabilities' (European Audiovisual Observatory, 2023) IRIS Plus 5–6, as they indicate that sign language interpretation entails 'the image of a signing interpreter that is overlaid over a portion of the image, signing the dialogue; and, if appropriate, other background sounds'.

91 Cabrera Blázquez and others (n 90). They also define subtitles as 'a text version of the speech and non-speech audio information needed to understand the content'.

92 *ibid* 3. Spoken subtitles or audio subtitles refer to 'the reading aloud of subtitles, [which] complements audio description especially in the case of subtitled foreign-language content'.

93 Cabrera Blázquez and others (n 90). They also indicate that audio description entails the description of 'visual content by inserting spoken information between the dialogue and other audio parts of the soundtrack'.

94 Daniel Casas, 'Audio-Visual Media Services Directive (AVMSD) - Has It Made Progress for Media Accessibility?' (European Disability Forum, 9 June 2023) <<https://www.edf-feph.org/audio-visual-media-services-directive-avmsd-has-it-made-progress-for-media-accessibility>> accessed 3 June 2024.

95 *ibid*.

96 Cabrera Blázquez and others (n 90) 17–18.

97 Casas (n 94).

98 Cabrera Blázquez and others (n 90) 18.

for certain content, notably in foreign languages⁹⁹.

3.2.3. Additional AVMSD Provisions on Disability

Apart from Article 7 AVMSD on the accessibility of audiovisual media services, which is a crucial provision for persons with disabilities, disability also features in additional articles of the Directive, particularly in the context of hate speech prohibition, audiovisual advertisements, and regulations for video-sharing platforms.

● Article 6 AVMSD

In this regard, Article 6(1)(a) AVMSD stipulates that Member States must ensure, by appropriate means, that audiovisual media services do not include incitement to violence or hatred against groups, or a member of a group, based on any of the grounds listed in Article 21 of the Charter of Fundamental Rights of the European Union (CFR).¹⁰⁰ These grounds include notably disability, as well as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, age, sexual orientation, or nationality.

● Article 9 AVMSD

Under Article 9(1)(c)(ii) AVMSD, Member States are required to ensure that audiovisual commercial communications do not include or promote any discrimination based on disability, as well as on other grounds. Both provisions offer substantial protection for persons with disabilities, and contribute to preventing as well as countering discrimination and hate speech against individuals with disabilities. Interestingly, some argue that, through these provisions, the EU also contributes to removing ‘the stigma that people with disabilities experience’, thereby promoting greater ‘social accessibility’ of audiovisual media services.¹⁰¹

● Article 28b AVMSD

In parallel, Article 28b AVMSD lays down similar obligations applicable to video-sharing platforms. In that sense, Article 28b(1)(b) AVMSD indicates that Member States must ensure that video-sharing platform providers take appropriate measures to protect the general public from programs, user-generated videos, and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons, or a member of a group, based once again on any the grounds mentioned in Article 21 CFR, therefore including on disability.

99 Casas (n 94).

100 Charter of Fundamental Rights of the European Union (CFR) [2012] OJ C326/391.

101 Charitakis (n 38) 223.

Moreover, Article 28b(2) AVMSD indicates that Member States must ensure that video-sharing platform providers comply with Article 9(1) AVMSD on the requirements applicable to advertising. This means that those video-sharing platform providers must ensure that the audiovisual commercial communications they market, sell, or arrange, do not include or promote any discrimination based on disability.

● Article 30 AVMSD

Lastly Article 30 AVMSD, which focuses on national regulatory authorities or bodies, explicitly mentions that Member States must ensure that those authorities and bodies exercise their powers impartially and transparently, as well as in accordance with a range of objectives, including accessibility and non-discrimination¹⁰².

3.3. National Implementation of Article 7 AVMSD

The changes brought by the 2018 AVMSD have in turn ‘called for significant developments at national level’.¹⁰³ The transposition, and therefore the implementation of the revised AVMSD, however, lagged behind the set schedule. By the transposition deadline of 19 September 2020, only Denmark, Hungary, the Netherlands, and Sweden had notified the Commission of the AVMSD’s transposition into national legislation. In that respect, the Court of Justice of the European Union (CJEU) decided in February 2024 to impose, against Ireland, a lump sum fine of €2.5 million, as well as daily fines of €10,000 from the date of judgment until the AVMSD is fully transposed, for failure to transpose fully into Irish law the revised AVMSD.¹⁰⁴

However, because the AVMSD is a minimum harmonization directive, Member States have followed different approaches in implementing Article 7 AVMSD. This has ranged from literal transpositions to more detailed and extensive accessibility measures implemented in national legal orders. Additionally, if many Member States have mirrored the wording of Article 7 AVMSD in transposing the AVMSD, it remains that its interpretation also varies. Therefore, this section examines how Article 7 AVMSD has been implemented across the Union and highlights some interesting practices that could be relevant for Ukraine.

3.3.1. Accessibility Means

When it comes to the accessibility tools used to make audiovisual media services accessible to persons with disabilities, a majority of Member States report that the most common accessibility techniques for broadcasting are subtitling, audio description, and sign language interpretation.¹⁰⁵ Likewise, the European Broadcasting Union (EBU) reports that public broad-

¹⁰² Art 30(2) AVMSD.

¹⁰³ European Audiovisual Observatory (n 79) 1.

¹⁰⁴ Case C-679/22 European Commission v Ireland [2024] ECLI:EU:C:2024:178. This infringement case is still active at the time of writing, see [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/?typeOfSearch=byCase&active_only=0&noncom=0&r_dossier=INFR\(2020\)0531&decision_date_from=&decision_date_to=&submit=Search%E2%9F%A8_code%3Des&langCode=EN&version=v1&refId=INFR\(2020\)0531&policyArea=CNECT-t1&page=1&size=10&order=desc&sortColumns=refId](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/?typeOfSearch=byCase&active_only=0&noncom=0&r_dossier=INFR(2020)0531&decision_date_from=&decision_date_to=&submit=Search%E2%9F%A8_code%3Des&langCode=EN&version=v1&refId=INFR(2020)0531&policyArea=CNECT-t1&page=1&size=10&order=desc&sortColumns=refId).

¹⁰⁵ European Audiovisual Observatory (n 79) 1.

casters are much more likely to use certain access services over others.¹⁰⁶ For instance, in 2022, 60% of the content made accessible by public broadcasters was subtitling, 12% audio description, and 7% sign language interpretation.¹⁰⁷

With respect to the list of concrete accessibility measures provided in the preamble to the 2018 AVMSD, spoken subtitles are, in fact, less widely used or mentioned in national legislation.¹⁰⁸ **Although not mentioned in the AVMSD, some Member States have also implemented accessibility measures in simple or easy-to-read language.**¹⁰⁹ For instance, Denmark provides that ‘one news programme on its sign language only channel has to be broadcast with simple language and subtitling’¹¹⁰, and that the public service broadcaster (DR) must also offer aid and remove barriers to access programmes for individuals having difficulties ‘reading and understanding’¹¹¹.

In response to advocacy from the disability community, some Member States have also begun developing codes of best practice or quality assurance manuals for audiovisual media service providers¹¹². These resources aim to particularly address ‘the low-quality or poorly applied accessibility measures [that] can interfere with the comprehension and appreciation of audiovisual media content’¹¹³. They present various advantages, particularly when developed with civil society organizations such as OPDs, as they ‘ensure best practice and present an opportunity to harmonise access for persons with disabilities’.¹¹⁴ However, codes have mostly been developed on subtitling, sign-language interpretation, and audio description, and as of 2023, the European Audiovisual Observatory (EAO) had not reported any on spoken subtitles and simple/easy-to-read programming.¹¹⁵

Interestingly, the European Union Agency for Fundamental Rights (FRA) notes that the share of sign language interpretation, audio description, and subtitling of key public programs providing instructions for voting and information on candidates is increasing.¹¹⁶ Notably, FRA reports that sign language interpretation of certain programs providing instructions for voting and information on candidates is now available in 23 Member States.¹¹⁷

106 Casas (n 94).

107 *ibid.*

108 European Audiovisual Observatory (n 79) 2.

109 *ibid.* 17.

110 *ibid.*

111 [DR's Public Service-Kontrakt for 2022-2025 \(Kulturministeriet\) sec 4.4.](#) (DK). [DR's Public Service Contract for 2022-2025]

112 European Audiovisual Observatory (n 79) 18.

113 *ibid.*

114 *ibid.* 19.

115 *ibid.* 18–19.

116 European Union Agency for Fundamental Rights (FRA) (n 1) 3.

117 *ibid.* 29.

3.3.2. Continuous and Progressive Implementation

While the AVMSD does not set out quantitative obligations to make audiovisual media services accessible – only stating that services should be made ‘continuously and progressively more accessible’ – it is common for Member States to impose such requirements, particularly for linear audiovisual media services rather than on-demand services. Further to that, Member States may also require media service providers under their jurisdiction to implement gradual quantitative increases to make their services more accessible, rather than qualitative ones.¹¹⁸

Therefore, many Member States have implemented quotas that consist of minimum levels of broadcasting services to be made accessible to people with disabilities¹¹⁹, referring at times to the proportion of programs, or airtime, that media service providers must dedicate to programs with accessibility measures¹²⁰. Quotas may vary depending on the total viewing hours, types of programming, or specific time windows they target, as well as on the accessibility means they are based on – most often subtitling, audio description, and sign language interpretation¹²¹. When selecting specific time slots for accessible audiovisual content, some Member States have also tried to target peak viewing time¹²².

In that sense, the Romanian Audiovisual Act provides that, in order to ensure the right of persons with hearing impairment to access audiovisual media services, television program services with national coverage shall provide sign language interpretation and real-time subtitles for a scheduled period of at least 30 minutes a day, for news, analysis and debate programs on topical economic and/or political issues¹²³. Additionally, programs deemed of major importance must be interpreted in sign language and provided with real time subtitles for their entirety, or for summaries¹²⁴.

As far as television programs with local coverage are concerned, the Romanian legislation imposes less stringent obligations on providers, who can then provide sign language interpretation and/or real-time subtitles for the aforementioned programs¹²⁵. In Poland, a gradually increasing scheme for accessible television programs has been adopted. It provides that for 2022 and 2023, at least 35% of quarterly broadcasting time – excluding advertising and teleshopping – must include accessible broadcasts to people with visual and hearing impairments, and it increased to 50% in 2024¹²⁶. In contrast, on-demand audiovisual media service

118 Cabrera Blázquez and others (n 90) 24.

119 *ibid* 23.

120 European Audiovisual Observatory (n 79) 1.

121 *ibid* 2.

122 Cabrera Blázquez and others (n 90) 23.

123 [LEGE nr 504 din 11 iulie 2002](#) (consolidated version 2024) art 42¹(2)(a) (RO). [Consolidated Audiovisual Act]

124 Art 42¹(2)(b) Consolidated Audiovisual Act (RO).

125 Art 42¹(3)(a) and (b) Consolidated Audiovisual Act (RO).

126 [Ustawa z dnia 22 marca 2018 r. o zmianie ustawy o radiofonii i telewizji \(2018\) art 2 \(PL\)](#). [Act of 22 March 2018 amending the Broadcasting Act]

providers are required to make 5% of their publicly available catalogues accessible to people with visual and hearing impairments in 2022, 10% in 2023, 20% for 2024 and 2025, and 30% as of 2026.¹²⁷

Austria is also an interesting case as it has introduced lesser quantitative increases but higher quality requirements.¹²⁸ Such qualitative obligations, less common than quantitative ones, are also not explicitly foreseen in the AVMSD. They mostly focus on broadcast techniques like subtitling, audio-description, and sign language interpretation. For instance, in Denmark, the public service broadcaster is tasked with incorporating principles of universal design in all content delivery, which means they favor ‘[h]igh quality over high quantity – the priority is for well made, accessible content’.¹²⁹

Several Member States also report initiatives aimed at guaranteeing ‘that accessibility is taken into consideration as soon as the creation of the work itself, or that works are “born accessible”’.¹³⁰ For example, France provides financial support to enhance the accessibility of audiovisual works to people with disabilities.¹³¹ As such, the French National Centre for Cinema and Animation (CNC) offers direct funding to producers for the creation of audio description files and subtitles for people with sensory disabilities.¹³² In Romania, the Audiovisual Act also places obligations to provide subtitling on Romanian cinematographic producers rather than exclusively on audiovisual media services providers.¹³³

Lastly, it is important to emphasize that Member States typically establish minimum accessibility requirements for media service providers to implement. **Consequently, these stakeholders are free, and sometimes even expected, to exceed the applicable statutory requirements, like the Portuguese public service broadcaster has done for instance.**¹³⁴ In this respect, the Polish national media regulatory authority has, for instance, the right to encourage media service providers to develop their accessible offerings beyond the statutory legal requirements.¹³⁵

3.3.3. Exemptions and Differentiated Obligations

As noted previously, while Article 7(1) AVMSD obliges, in broad terms, Member States to ensure the progressive and continuous accessibility of services provided by media service providers under their jurisdictions, the specifics of such obligations are left at the discretion of Member States. This entails that some Member States introduced exemptions to the accessibility requirements they set out but also decided to apply different accessibility stan-

¹²⁷ [Ustawa z dnia 11 sierpnia 2021 r. o zmianie ustawy o radiofonii i telewizji oraz ustawy o kinematografii \(2021\) art 4\(1\) \(PL\)](#). [Act of 11 August 2021 amending the Broadcasting Act and the Cinematography Act]

¹²⁸ European Audiovisual Observatory (n 79) 13.

¹²⁹ *ibid* 59.

¹³⁰ Cabrera Blázquez and others (n 90) 48.

¹³¹ *ibid*.

¹³² [Règlement général des aides financières du Centre National du Cinéma et de l’Image Animée](#) (consolidated version 2024) arts 211-87-211-93 (FR).[General Regulations governing Financial Assistance from the National Centre for Cinema and Animation]

¹³³ Art 42¹(4) Consolidated Audiovisual Act (RO).

¹³⁴ European Audiovisual Observatory (n 79) 13.

¹³⁵ *ibid* 119.

dards depending on the type of media service provider concerned.

In this regard, both the European Commission and the EAO note that, in a majority of Member States, public broadcasters have to comply with higher standards of accessibility compared to private or commercial audiovisual media service providers.¹³⁶ Furthermore, Member States also appear to set different obligations depending on the nature of the content and therefore, tend to apply more stringent accessibility requirements to media services of general interest, political and economic debates, and news programs.¹³⁷

Moreover, it appears that a large majority of countries have opted to require both broadcasters and VOD providers to offer accessible services.¹³⁸ However, non-linear services may sometimes face less stringent obligations than linear services, and in a few Member States, they are not the object of accessibility obligations at all.¹³⁹ Overall, Member States still report improvements in the accessibility of non-linear audiovisual media services, with a number of them having introduced 'specific regulations applicable to on-demand audiovisual media service providers', such as quotas of accessible content.¹⁴⁰ In that sense and as observed previously, Poland distinguishes the obligations applicable to television broadcasts and those specific to video-on-demand services while maintaining a gradual 'increase [of] the percentage of accessible programming' for both types.¹⁴¹

Almost half of Member States have also introduced exemptions, which usually relate to the broadcaster's annual turnover or viewer timeshare¹⁴², including, for instance, the low average audience in the previous year, the specialized nature of on-demand audiovisual services¹⁴³ (e.g. thematic channels for live music and sports broadcasts)¹⁴⁴, the purely local or regional scope of the broadcaster, or small turnover¹⁴⁵.

Regarding video-sharing platforms, which are not covered by Article 7 AVMSD, insights from national experts suggest that, accordingly, Member States 'have not yet engaged in much regulation' concerning the accessibility of these services.¹⁴⁶

3.3.4. Development of Accessibility Measures and Action Plans

While Article 7 AVMSD provides for general accessibility obligations so that persons with disabilities can access audiovisual content, Member States have had to incorporate such general provisions into national rules. In this respect, they have followed different approaches to

¹³⁶ European Commission (n 82) 8; European Audiovisual Observatory (n 79) 2.

¹³⁷ European Commission (n 82) 8.

¹³⁸ Cabrera Blázquez and others (n 90) 22.

¹³⁹ *ibid.*

¹⁴⁰ European Commission (n 82) 8.

¹⁴¹ Cabrera Blázquez and others (n 90) 41.

¹⁴² Tudisco (n 35) 22; European Audiovisual Observatory (n 79) 6.

¹⁴³ [Ustawa o radiofonii i telewizji](#) (consolidated version 2024) art 18a (2)2) and 3) (PL). [Consolidated Broadcasting Act]

¹⁴⁴ European Commission (n 82) 8.

¹⁴⁵ [Gesamte Rechtsvorschrift für Audiovisuelle MediendiensteGestze](#) (AMD-G) (consolidated version 2024) para 30b(1) (AT). [Federal Act on Audiovisual Media Services]

¹⁴⁶ European Audiovisual Observatory (n 79) 7.

develop accessibility measures as they transposed the AVMSD. Three systems can therefore be highlighted:

- **Regulation:** accessibility measures are developed by the NRAs;
- **Co-regulation:** accessibility measures are developed by the NRAs in collaboration with audiovisual media service providers;
- **Self-regulation:** industry stakeholders take the lead, meaning that media service providers may develop action plans, as encouraged in Article 7(3)AVMSD, to be then submitted to regulatory bodies for information purposes or approval.¹⁴⁷

Although only encouraged in the AVMSD, most Member States in fact impose the adoption of action plans, and only a few merely suggest them or do not mention them¹⁴⁸. One Member State even requires the submission of an accessibility action plan from the media service providers applying for a license for the provision of television services¹⁴⁹. Some Member States noted that action plans have not yet been developed or shared by media service providers due to the late transposition of the revised AVMSD¹⁵⁰. This is overall consistent with the CRPD Committee's interpretation of Article 9 CRPD on accessibility, whereby States Parties are required to 'adopt, promulgate, and monitor national accessibility standards¹⁵¹'. It further stresses that 'States Parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers¹⁵²'. However, in this respect, only a handful of Member States require that accessibility action plans be developed in consultation with organizations of persons with disabilities.¹⁵³ This contrasts with the CRPD, which explicitly provides in Article 4(3) CRPD that 'States Parties shall closely consult with and actively involve persons with disabilities, through their representative organizations' in the development and implementation of any legislation and policies on issues relating to persons with disabilities.

3.3.5. Reporting Process and Points of Contact

With respect to Article 7(2) AVMSD, which touches upon reporting obligations, it appears that the implementation across Member States is relatively consistent¹⁵⁴. All Member States have indeed implemented Article 7(2) AVMSD on the reporting obligation of media service providers to national regulatory authorities or bodies. However, some failed to mention the obligation to report to the European Commission every three years.¹⁵⁵

The specifics of what must be included in those reports, particularly those submitted by media service providers, differs from Member State to Member State. This variation concerns

147 Cabrera Blázquez and others (n 90) 52.

148 Tudisco (n 35); Cabrera Blázquez and others (n 90) 53–54.

149 European Commission (n 82) 9.

150 *ibid.*

151 CRPD Committee (n 18) para 27.

152 CRPD Committee (n 2) para 33.

153 European Audiovisual Observatory (n 79) 21.

154 *ibid.*

155 *ibid.* 22.

for instance the frequency of reporting, the requirements for linear and non-linear service providers, or the topics to be addressed, such as any explanation for failure to meet the required goals.¹⁵⁶ In that respect, the European Commission recently reported that 14 Member States have indicated that media service providers submitted reports to the competent NRA on their implementation of accessibility measures.¹⁵⁷ However, when discussing the application of the AVMSD, the European Commission also notes various challenges that Member States report encountering when implementing Article 7 AVMSD, including:

- financial constraints, technical challenges (eg. increasing the size of the window dedicated to the Sign Language interpreter on each device, or giving the ability to change the size of the subtitles on each platform), and intellectual property challenges (eg. creating audio descriptions without the authorisation of the copyright holder could be seen as an infringement).¹⁵⁸

Moreover, some Member States have granted extensive powers to their regulatory bodies, either investigatory or sanction-wise, allowing NRAs to prosecute, impose sanctions, or decide legal supervision on media service providers failing to comply with their accessibility obligations.¹⁵⁹ **In terms of sanctions, Danish legislation notably authorizes the NRA to suspend or even revoke a media provider's broadcasting license temporarily or permanently in response to gross or repeated noncompliance with the accessibility rules.**¹⁶⁰ In that vein, Austria indicates the possibility for its NRA to institute legal supervision proceedings to sanction audiovisual media service providers in relation to accessibility measures.¹⁶¹

Regarding the implementation of Article 7(4) AVMSD, which requires the designation of a single, easily accessible, and publicly available point of contact for providing information and receiving complaints on accessibility, it appears that most Member States 'have not set up a specific portal for complaints and information about accessibility'¹⁶². Instead, they typically redirect to general websites and complaint procedures of the national regulatory authorities or bodies, where information for persons with disabilities may sometimes be difficult to identify¹⁶³. Only a handful of Member States have set up a specific point of information and complaint – as a subpage of the NRAs' website or an independent website¹⁶⁴. A number of Member States have set up detailed complaints procedures in that regard, including timelines and specified processes for appeal.¹⁶⁵

As noted by the EAO, little information is available about active or completed complaints pro-

156 *ibid* 22–23.

157 European Commission (n 82) 8.

158 European Audiovisual Observatory (n 79) 2.

159 *ibid* 3.

160 [BEK nr 944 af 18. juni 2020 Bekendtgørelse om tilgængelighed af programvirksomhed på grundlag af tilladelse og regi-strering for personer med handicap \(2020\) sections 5 to 8 \(DK\)](#). [Order No. 944 of 18 June 2020 on Accessibility of Licensed and Regulated Programming for Persons with Disabilities]

161 [Bundesgesetz über die Einrichtung einer Kommunikationsbehörde Austria \(„KommAustria“\) \(KommAustria-Gesetz – KOG\) \(consolidated version 2024\) para 20b\(2\) \(AT\)](#). [Federal Act on the establishment of an Austrian Communications Authority (“KommAustria”)]

162 European Audiovisual Observatory (n 79) 23.

163 *ibid* 23–24.

164 *ibid* 23.

165 *ibid* 24.

cedures, and at the time of their reporting, only the Polish national expert had reported the processing of ten complaints when Finland and Greece were also proceeding with complaints.¹⁶⁶

3.3.6. Emergency Information

With regards to Article 7(5) AVMSD on accessible emergency information, overall, a majority of Member States indicate that emergency information will be provided in an accessible manner, when a small number provide that it will be provided to the best of the ability of the audiovisual media service provider¹⁶⁷. With regards to this specific provision, the EAO also notes that Member States seem to follow two approaches: ‘imposing an obligation with no reference to costs or challenges to implementation or taking a more practical approach’¹⁶⁸. Certain Member States, like Austria or Denmark, provide for the allocation of ‘any extraordinary costs of making emergency information accessible to the state rather than the broadcaster’.¹⁶⁹ **Greece also mentions specifically that emergency information, including public communication and announcements in natural disasters, must be provided in an accessible and easy-to-understand manner.**¹⁷⁰ In this context, Slovenia explicitly states that the failure to provide emergency information in an accessible format is grounds for a complaint.¹⁷¹

In this respect, DPOs also highlighted some shortcomings in terms of emergency notification, especially in the aftermath of the COVID-19 pandemic¹⁷². The European Union of the Deaf (EUD) also insisted that, **despite advancement in terms of sign-language recognition technologies, it would be crucial to ensure the use of sign language interpreters in important broadcast such as emergency information. This is particularly important to ensure that all elements of the information – sense of urgency or the tone of voice for instance – are properly conveyed and understood.**¹⁷³

166 *ibid* 23.

167 *ibid* 25.

168 *ibid*.

169 *ibid* 26.

170 [ΝΟΜΟΣ ΥΠ’ ΑΡΙΘΜ. 4779](#) (2021) art 10 para 5 (EL). [Law n°4779 on “Accessibility of people with disabilities in audiovisual media services”]

171 [Splošni akt o varstvu ranljivih skupin](#) (2022) art 4(2) (SI). [General Act on the Protection of Vulnerable Groups]

172 Cabrera Blázquez and others (n 90) 68.

173 European Union of the Deaf (EUD), ‘EUD Position Paper Accessibility of Information and Communication’ 7–8 <<https://www.eud.eu/wp-content/uploads/2022/03/EUD-Position-Paper-Accessibility-of-Information-and-Communication.pdf>>.

4. The Law on Media of Ukraine and the Rights of Persons with Disabilities

4.1. General Overview

4.1.1. Context and Background

The Constitution of Ukraine guarantees fundamental rights and freedoms, including the right to access information¹⁷⁴. Despite numerous revisions, a framework law regulating media, such as the Law of Ukraine on Television and Radio Broadcasting adopted in 1994, had long been outdated, addressing only traditional television and radio without a comprehensive and robust framework for effective media regulation. For almost two decades, no significant amendments were made to revise legislation in line with international standards. By signing the AA/DCFTA in 2014, Ukraine committed to align its legislation with the AVMSD by 2019¹⁷⁵.

Although several attempts were made to revise the Law of Ukraine on Television and Radio Broadcasting to align with the AVMSD – such as initiatives in December 2019 and July 2020 – none were considered by the Ukrainian Parliament (Verkhovna Rada).¹⁷⁶

The draft Law on Media, introduced in July 2022, intended to broaden the scope of the Law of Ukraine on Television and Radio Broadcasting and strengthen the powers of the National Council on Television and Radio Broadcasting (National Council). After undergoing extensive amendments, the law was adopted by the Verkhovna Rada on 13 December 2022 and signed into law by the President, Volodymyr Zelensky, on 29 December 2022. It subsequently came into force on 31 March 2023 as part of a series of urgent measures adopted to meet the requirements for Ukraine's EU candidate status. Since its adoption in December 2022, the law has been amended five times, leaving unaddressed accessibility issues.

Overall, progress on the accessibility of media services for persons with disabilities in Ukraine is undertaken following Euro-integration requirements and according to the implementation of the Cabinet of Ministers of Ukraine Order 'On Approval of the National Strategy for Creating a Barrier-Free Environment in Ukraine for the Period until 2030,'¹⁷⁷ one of the six sections being dedicated to information accessibility. **Put forward by the Government, the Strategy highlights procedures and conditions for the provision of subtitling, sign language translation and audio description by media services, and encourages more regulation in this field.**¹⁷⁸

174 Art 34 Constitution of Ukraine.

175 Annex XXXVII of the Chapter on Audiovisual sector policy to the AA/DCFTA.

176 Council of Europe (n 10).

177 Cabinet of Ministers of Ukraine Order No. 366-r dated April 14 2021, on Approval of the National Strategy for Creating a Barrier-Free Environment in Ukraine for the Period until 2030 (2021)

178 European Audiovisual Observatory, 'The Application of the AVMS Directive in Selected Non-EU Countries' (2023) 428.

The Law on Media and the issue of the accessibility of media services must also be understood in conjunction with Ukraine's main legislation on persons with disabilities, the Law on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine¹⁷⁹.

Notably, Article 23 recognizes sign language as the language of people with hearing impairments, a tool of communication and education, protected by the state, and requires the interpretation in sign language, and subtitling, of official announcements, films, videos and programs on all broadcasters.

Per Article 26 of this law, owners and producers of vehicles, information producers and consumers (including print media, broadcasters, etc.), electronic communications service providers, and producers of radio and terminal equipment are required to ensure their products and services are accessible and considerate of the needs of persons with disabilities.

Some accessibility standards further support the accessibility of audiovisual media services in Ukraine including the Ukrainian national standard titled 'Information Technology. Requirements for the Accessibility of ICT Products and Services or DSTU EN 301549:2022¹⁸⁰. Based on the European standard EN 301 549, it outlines the requirements for information and communication technologies to ensure they are accessible to people with disabilities. In this context, the Law on Media constitutes a fundamental piece of legislation for Ukraine, and a significant milestone towards aligning national legislation with EU acquis. Therefore, it is expected that this legal act should be a key instrument in guaranteeing the right to accessibility of Ukrainians with disabilities, in line with the UN CRPD, ratified by Ukraine in 2009. This section will further analyze the Law on Media comprehensiveness in relation to the AVMSD and assess whether it meets the requirements of the CRPD.

4.1.2. Scope

The Law on Media aims to uphold the right to freedom of expression, the right to receive diverse, reliable, and timely information, and to promote the pluralism of opinions and free dissemination of information. It further seeks to ensure 'the protection of Ukraine's national interests and the rights of media service users, the regulation of activities in the media sphere in accordance with the principles of transparency, fairness, and impartiality, the stimulation of a competitive environment, equality, and independence of the media¹⁸¹. It encompasses a broad range of media services, including broadcasting services (radio and television), on-demand media services (audio and audiovisual), video-sharing platforms services (VSPs), print and online media services, and electronic communications operators.

179 Art 35 Law on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine.

180 Order of the Ukrainian Scientific-Research and Educational Center for Standardization, Certification, and Quality 05.05.2022 No. 68 On the Adoption of the National Standard (2022)

181 Art 4 Law on Media.

The Law on Media vastly extends the scope of the Law of Ukraine on Television and Radio Broadcasting, which covered only linear television and radio, by including additional services and providers, including those covered by the AVMSD — such as on-demand audiovisual media services and video-sharing platforms — and others such as print and online media. Additionally, the legislator included linear and non-linear radio broadcasting under the definition of audiovisual media services. Therefore, it differs from the AVMSD, which focuses only on television broadcasting (linear), on-demand audiovisual media services (non-linear) and video sharing platform services.

While such a broad scope may seem unusual, it is permissible under the AVMSD and Council of Europe standards, as definitions of services covered in the AVMSD — television broadcasting and on-demand audiovisual media services — align with the AVMSD¹⁸². However, in view of the differences between the scope of the AVMSD and the Law on Media, it was decided to focus only on linear and non-linear audiovisual services, providers of audiovisual services, and video-sharing platforms, as these are subject to obligations related to disability.

The Law on Media addresses various aspects of the regulation of Ukrainian media stakeholders and specifically provides definitions, scope, and rules for determining jurisdictions. Key areas of focus include hate speech, child protection, audiovisual works, and the right to reply. It therefore legislates over the licensing/registration of media service providers, the functioning of the local public service broadcasting, the protection of European and independent productions, the co-regulation process, media literacy, child protection, as well as content obligations and restrictions, including those related to war. Additionally, the Law on Media outlines the legal status, formation process, activities, and powers of the National Council on Television and Radio Broadcasting of Ukraine (National Council). The National Council serves as the State supervisory and regulatory authority responsible for overseeing activities in the media sector and ensuring control and compliance within this field.¹⁸³

The regulation on production and distribution of advertisement in Ukraine is governed by the Law “**On Advertising**” with language-specific provisions under the Law “On Ensuring the Functioning of the Ukrainian Language as the State Language”. Media activities during elections and referendums, including campaigning and information dissemination, are primarily regulated by election and referendum laws, while the National Council oversees compliance as defined by the Law on Media. The provision of public audiovisual media services is guided by the Law “On Public Media in Ukraine”, while international broadcasting services are regulated by the Law “On the System of Foreign Broadcasting of Ukraine”. Local public and community audiovisual media services fall under the purview of the Law on Media and other relevant national legislation.¹⁸⁴

182 Council of Europe (n 10) 12.

183 Art 6 para 4 Law on Media.

184 Art 2 para 3-7 Law on Media.

4.1.3. Provisions on Disability-based Discrimination, Hate Speech and Dissemination

Before presenting the Law on Media's accessibility provisions, this sub-section provides some remarks on the conceptualization of disability in the Ukrainian piece of legislation, and discusses different disability-focused provisions it puts forward, besides those on accessibility.

First, it is worth noting that, similarly to the AVMSD, the Law on Media refers to 'persons with disabilities' broadly, without offering a set definition.

As the AVMSD, the Law on Media discusses disability in the context of hate speech and discrimination. In that respect, Article 36.1.2 of the Law on Media prohibits the dissemination through media and video-sharing platforms of information containing statements that foster hatred, hostility, or violence towards 'individuals or groups of individuals based on ethnic or social origin, citizenship, nationality, race, religion or belief, age, sex, sexual orientation, gender identity, disability'. In addition, Article 36.1.3 prohibits incitement to discrimination or harassment on the abovementioned grounds, including on disability. Different penalties are foreseen for violation of Articles 36.1.2 and 36.1.3, with higher penalties levied for incitement to hatred. In addition to discrimination-specific bans, Article 36 aligns with broader restrictions on content such as propaganda of violence, terrorism, or authoritarian regimes. These overlapping protections reinforce an inclusive and respectful media environment. Furthermore, according to Article 36.2, the National Council, in collaboration with co-regulatory bodies, is responsible for developing criteria to identify content that violates the provisions of this article. Until these criteria are formally established, the National Council independently evaluates and substantiates the application of restrictions through its decisions.

In that respect, it is interesting to note that the draft Law on Media faced criticism for failing to align fully with the AVMSD in this regard, as originally it did not include certain grounds of protection covered under Article 21 CFR¹⁸⁵. **The Council of Europe particularly recommended that the Ukrainian law be aligned with the AVMSD standards on prohibiting incitement to hatred, and it was later revised and amended. It now explicitly protects characteristics of 'ethnic or social origin, citizenship, nationality, race, religion and beliefs, age, sex, sexual orientation, gender identity, disability'**.¹⁸⁶ Therefore, it closely adheres to the standards set by the AVMSD.

Articles 110 and 112 of the Law on Media also provide for the liability of audiovisual linear, non-linear and online media entities for violations of the conditions and requirements of media legislation. This grants the National Council the authority to take corrective measures, including in the case of statements inciting discrimination or harassment, including on the grounds of disability, which is considered a 'significant and gross violation'.¹⁸⁷

Reducing acts of discrimination in media is also one of the 20 key strategic goals set by the National Council. It is outlined in the Strategy of the National Council of Ukraine on Television and Radio Broadcasting for 2024-2026, which takes into account the norms of the new Law on Media.¹⁸⁸ Although it does not mention disability directly, Strategic Goal 7 declares the 'inadmissibility of discrimination on any grounds', and lists the main measures that the National Council intends to undertake to achieve this goal. These include regular moni-

185 Council of Europe (n 10) 13.

186 Amendments to Law No. 3136-IX dated 30.05.2023.

187 Art 110.10.1, 110.11.2 and Article 112.3.1., 112.4.3. Law on Media

188 Strategy of the National Council of Ukraine on Television and Radio Broadcasting for 2024-2026, 17.

toring, normative developments, public engagement by addressing complaints, suggestions, and proposals from individuals and organizations and international cooperation. Rooted in the broader legal framework that promotes equality and non-discrimination, Strategic Goal 5 focuses on ‘Enhancing media inclusivity’. In this respect, the National Council is committed to cooperate with co-regulatory bodies to develop and approve an action plan to ensure accessibility of services for persons with disabilities; to take measures to increase the share of broadcasting programs for persons with disabilities; and to collaborate with media entities on covering the topics of accessibility and inclusivity in the media.¹⁸⁹

Aside from the clear commitment to develop and approve an action plan to ensure accessibility of services for persons with disabilities in 2024, the 2024 Implementation Plan for the National Council’s Strategy 2024-2026 lacks other specific performance indicators. Most activities to achieve the above mentioned strategic goals (5 and 7) are described in vague terms, such as ‘participation in the preparation’, ‘measures were taken’, ‘meetings and conferences were held’, and ‘informational materials were prepared.’¹⁹⁰

Finally, it is worth noting that the Law of Ukraine on Television and Radio Broadcasting – which was repealed following the enactment of the Law on Media – used to include only a single provision related to disability. In that respect, it required the editorial statutes of television and radio providers to include requirements for disseminating information about various demographic groups such as national and sexual minorities, religious groups, people who have illnesses, and people with disabilities¹⁹¹. Its successor, the Law on Media, does not include this provision, which is regrettable given its alignment with Article 8 CRPD. Article 8 CRPD specifically requires State Parties to undertake efforts to raise awareness about people with disabilities and to promote respect for their rights and dignity, including through the use of media. Nevertheless, the Law on Public Media of Ukraine includes a dedicated article focusing on this issue, with the Editorial Statute of the National Public Television and Radio Broadcasting Company of Ukraine (NSTU) outlining specific requirements for the dissemination of information about various population groups, including ‘individuals with illnesses and persons with disabilities’.¹⁹²

4.2. Accessibility of Audiovisual Media Services in the Law on Media

4.2.1. General Provisions

Overall, matters of accessibility and protection of the rights of persons with disabilities are not addressed in a specific article or section of the Law on Media but are included in various provisions.

Article 3 of the Law on Media highlights the State’s commitment to enhancing media accessibility for persons with disabilities by providing targeted support to media providers ‘that disseminate media [...] for persons with disabilities’. However, the Law of Ukraine

189 Strategy of the National Council of Ukraine on Television and Radio Broadcasting for 2024-2026, 16.

190 Implementation Plan of the Strategy of the National Council of Ukraine on Television and Radio Broadcasting for 2024-2026, 13–18.

191 Art 57 para 4 Law of Ukraine on Television and Radio Broadcasting.

192 Art 19.1.8) Law on Public Media of Ukraine

on the State Budget of Ukraine for 2024 does not contain any information regarding this¹⁹³. In the same vein, Article 3 of the Law on State Support for Media, Guarantees of Professional Activity, and Social Protection of Journalists specifies that state-targeted support is provided ‘exclusively to providers in the field of media that distribute media for [...], persons with disabilities’.¹⁹⁴

Article 4 of the Law on Media outlines the key principles – such as freedom of expression and belief, legality, openness, accuracy, completeness – that underpin the operation of media service providers and their role in disseminating information. It provides a framework that ensures media providers operate freely and responsibly while safeguarding the rights of individuals. Among these, Article 4 also introduces ‘accessibility’ as a key principle. Although, in the general context of this article, accessibility seems to refer more to openness and availability, it may also refer to making information and media services accessible for users with disabilities. **To fully support accessibility for people with disabilities, however, it is crucial that this principle specifically extends to the accessibility of formats for persons with disabilities.**

The Law on Media also introduces a range of amendments to other pieces of legislation to address accessibility in electoral processes. With regards to the All-Ukrainian referendum, **Article 94.13 requires amendments** facilitating voters’ access to election campaign materials without discrimination, including by producing printed and audiovisual materials in **accessible formats** or bringing official websites in line with accessibility standards. In this context, Article 98.6 also indicates that campaign materials disseminated by linear audiovisual media providers must be **subtitled and/or translated into Ukrainian sign language to ensure their accessibility for persons with visual or hearing impairments**, considering the requirements established by the National Council, which have not been established yet. Article 100 further indicates that subtitling and/or translation into Ukrainian sign language are provided at the expense of the election campaign commissioner of the all-Ukrainian referendum.

4.2.2. Accessibility Means

The Law on Media addresses the accessibility of audiovisual media services for people with visual and hearing disabilities. It does not include provisions or references regarding the accessibility of audiovisual services for people with intellectual or psychosocial disabilities, nor does it provide for the use of Simple Language and/or Easy Read format.

Definitions and standards for audio description, sign language, subtitles, Simple Language and Easy Read format are defined in the Methodological Recommendations on Ensuring Barrier-Free Accessibility in the Media Sector adopted by the Ministry of Culture and Information Policy of Ukraine in 2024¹⁹⁵. These recommendations outline the importance of creating accessible media services for persons with disabilities and provide guidance on measuring the volume of accessible programming, ensuring the accessibility of official emergency communications.

193 Law of Ukraine on the State Budget of Ukraine for 2024 (#3460-IX).

194 Art 3, Law on State Support for Media, Guarantees of Professional Activity, and Social Protection of Journalists (#540/97-BP).

195 Ministry of Culture and Information Policy, ‘[Methodological Recommendations on Ensuring Barrier-Free Accessibility in the Media Sector](#)’ (2024).

4.2.3. Continuous and Progressive Implementation

The Law on Media does not contain provisions which establish the continuous and progressive realisation of the accessibility of audiovisual media services. At the same time, Article 18 of the Law on Public Media in Ukraine obliges the National Public Television and Radio Broadcasting Company of Ukraine (NSTU) to take measures to ensure the accessibility of its programs to persons with visual or hearing impairments by adapting programs through audio description, subtitling or sign language translation. The share of such adapted programs must be at least 5% of the daily broadcast volume of television channels between 7:00 and 22:00, except for the time allocated for audiovisual commercial information.

Daily monitoring of 35 Ukrainian national television channels conducted by the National Council revealed that while subtitling technology is used on 33 channels, sign language interpretation is available on only 10 channels, including those broadcasting the “United News” marathon, accounting for just 1,305 minutes (approximately 2.6%) of the total 50,400 minutes of daily broadcasting, with 1,275 minutes (2.5%) provided by the National Public Broadcasting Company of Ukraine (“Pershyi” channel) and the remainder consisting of social advertisements featuring sign language interpretation.

The National Council concludes that most Ukrainian media content remains inaccessible to people with disabilities, and national broadcasters do not fully adhere to international standards of audiovisual media services accessibility.¹⁹⁶

4.2.4. Development of Accessibility Measures and Action Plan

The new Ukrainian Law on Media introduces co-regulation as a new type of relationship between media service providers and State **authorities**.¹⁹⁷ The aim of co-regulation is to ensure the involvement of media stakeholders in developing and defining content requirements, as well as to prevent censorship and misuse of freedom of speech. The co-regulatory bodies established by the Law on Media are not self-regulatory organizations and their existence does not affect the practice of industry-specific or other self-regulation in media and journalism, which remains based on voluntary participation, self-management, and non-interference by the State.

196 How Accessible is Television Content for People with Disabilities: Monitoring Results 27.12.2024
<https://webportal.nrada.gov.ua/naskilky-televizijnyj-kontent-dostupnyj-dlya-lyudej-z-invalidnistyu-rezultaty-monitorynghu/>

197 Art 92-96 Law on Media.

The law provides for the establishment of **co-regulatory bodies** in five sectors:

- Audiovisual media services;
- Audio media services;
- Print media;
- Online media;
- Video-sharing platforms.

The co-regulation framework establishes requirements for the dissemination of information subject to content regulation through the adoption of codes or rules governing the creation and dissemination of such information. Media entities voluntarily commit to complying with these requirements, which the National Council deems sufficient to protect public interests. As part of the co-regulation scope, **Article 92.2** of the Law on Media specifies certain matters related to the rights of persons with disabilities, including the approval of **action plans for ensuring the accessibility of audiovisual media services for people with disabilities**.¹⁹⁸ It must be understood in conjunction with Article 90 of the Law on Media, which tasks the National Council to jointly develop and approve, together with the co-regulatory body, an action plan to ensure the accessibility of services for persons with disabilities. In that context, Article 92 further indicates that media providers voluntarily adhere to requirements developed as part of the co-regulation process, and the National Council of Television and Radio Broadcasting acknowledges that these requirements (codes of rules) are sufficient to safeguard public interests. Moreover, as of 10 December 2024, the co-regulatory bodies have yet to commence its operations.¹⁹⁹

4.2.5. Reporting Process and Points of Contact

Additionally, Article 49, which deals with the protection of the rights of users, indicates that audiovisual media providers (except for audio media providers) are **obliged to submit a report to the National Council every three years** on the accessibility of their services for persons with disabilities.²⁰⁰ Considering that the Law on Media came into force on 31 March 2023, such reports are required to be submitted by 31 March 2026. However, as of December 2024, the codes or rules regarding accessibility have not yet been developed.

Article 49.1(4) also grants every user the right to **submit appeals** regarding the accessibility of audiovisual media services for persons with disabilities²⁰¹. Furthermore, **Article 90** of the Law on Media outlines the powers of the National Council. It also provides that the National Council establishes ‘an effective mechanism on its official website for submitting requests regarding the accessibility of services provided by entities in the field of audiovisual media for persons with disabilities’²⁰². However, the Law on Media does not indicate that a point of contact for information on accessibility shall be established.

198 Art 90.1.50) Law on Media.

199 Official response to the inquiry from the Fight For Right OPD to the National Council of Ukraine on Television and Radio Broadcasting, 12.12.2024.

200 Art 49.2 Law on Media.

201 Art 49.14 Law on Media.

202 Art 90.1.57 Law on Media.

4.2.6. Emergency Information

Timely access to emergency information in accessible formats is essential for ensuring the safety of persons with disabilities during emergencies. **Article 45** of the Law on Media indicates that linear media providers must ensure the accessibility of official announcements during emergencies through sign language, subtitles, and audio description, among other means²⁰³. This provision is a crucial step towards aligning with the CRPD, particularly Article 11 CRPD, which emphasizes the need for accessible information in situations of risk. Additionally, it is necessary to outline the importance of accessible emergency information, especially as the next elections in Ukraine might take place in high-risk situations.

The provisions of this article must also be understood in view of the Civil Protection Code of Ukraine, which defines the concept of civil protection information and obliges civil protection authorities to provide the population with timely and accurate information on emergency situations, which occurred or might occur, through the media, ‘in a form accessible to persons with visual and hearing impairments’.²⁰⁴

In that context, the Law on Media further complements the Regulation on the Organization of Warning about the Threat of or Occurrence of Emergencies and the Organization of Communication in the Civil Protection Sphere (Warning Regulation)²⁰⁵, which defines audio and audiovisual media as the primary channels for informing and alerting about emergencies. Article 3 of the Warning Regulation emphasizes the need to ‘take into account the specific features of warning persons with physical, mental, intellectual, and sensory impairments’. Additionally, Article 18 of the Warning Regulation specifically requires that the delivery of signals, messages about the threat of or occurrence of emergencies to the population, as well as information, is carried out using broadcasting channels or channels of the terrestrial multi-channel electronic communication network of the **National Public Broadcasting Company of Ukraine**, providers in the field of audio or audiovisual media, ‘with the information being accompanied by sign language and/or subtitling, if it is voice-based, and audio description, if it is visual’.

Moreover, Article 37 of this regulation directly outlines the organization of warning and informing ‘persons with physical, mental, intellectual, and sensory impairments and other vulnerable groups of the population (persons accompanying them)’ by local executive authorities, owners of facilities with mass gatherings of people, and heads of enterprises, institutions, and organizations, regardless of ownership, ‘where such persons work or may be present’. It calls for the use of various technical means ‘that take into account the differentiation by types of disability limitations of people with disabilities (sound beacons, sound-light alarms, audio description means, subtitling, sign language interpreting, text message distribution, and other appropriate means)’.

203 Art 45.4 Law on Media.

204 Art 21, 31 and 33 Civil Protection Code of Ukraine..

205 Regulation on the Organization of Warning about the Threat of or Occurrence of Emergencies and the Organization of Communication in the Civil Protection Sphere of the Cabinet of Ministers of Ukraine No 733 from 27 September 2017.

Disability activists and experts have highlighted the largely declarative nature of legislation regarding the accessibility of information for people with disabilities in emergency situations, especially during the full-scale Russian invasion of Ukraine²⁰⁶. This can be attributed to the lack of clear standards for information accessibility in media, effective mechanisms for implementing legal norms, and lack of appropriate accountability tools.

5. Assessing the Compatibility of the Ukrainian Law on Media with the AVMSD: A Focus on Accessibility for Persons with Disabilities

5.1. Legal Framework and Alignment

Ukrainian Legislation	Details
Article 7(1) AVMSD	
<p>Law on Media, Articles 3, 4, 17, 92, 94, and 98</p>	<p>Article 3 provides that State targeted support is provided exclusively to certain media providers including those that disseminate media for persons with disabilities.</p> <p>Article 4.1 indicates that activities in the media sector are based on a number of principles including accessibility of information.</p> <p>Article 18 of the ‘Law on Public Media in Ukraine’ obliges the NSTU to take measures to ensure the accessibility of programs to persons with visual or hearing impairments by adapting programs through audio description, subtitling, or sign language translation. The share of such adapted programs must be at least 5% of the daily broadcast volume of television channels between 7:00 and 22:00, except for the time allocated for audiovisual commercial information.</p> <p>Article 92 discusses the co-regulation procedure, which also touches upon the approval of codes, rules, requirements, as well as the action plan to ensure the accessibility of services for persons with disabilities.</p> <p>In the context of the All-Ukrainian referendum, Article 94.13 indicates that Election process providers must facilitate voters’ access to election campaign materials without discrimination, including by producing printed and audiovisual materials in accessible formats, or bringing official websites in line with accessibility standards.</p> <p>In this context, Article 98.6 also specifies that election campaign materials disseminated by linear audiovisual media providers must be subtitled and/or translated into Ukrainian sign language to ensure their accessibility for persons with visual or hearing impairments, considering the requirements established by the National Council.</p> <p>Article 100 further indicates, that in this context, subtitling and/or translation into Ukrainian sign language are provided at the expense of the election campaign materials’ commissioner of the all-Ukrainian referendum.</p>

Ukrainian Legislation	Details
<p>Law of Ukraine on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine Article 23</p> <p>Methodological Recommendations on Ensuring Barrier-Free Accessibility in the Media Sector</p> <p>Law on State Support for Media, Guarantees of Professional Activity, and Social Protection of Journalists, Article 3</p>	<p>Article 23 calls for the inclusion of sign language and subtitling into official announcements, films, videos and programs on all broadcasters – under conditions to be determined by the Cabinet of Ministers of Ukraine.</p> <p>These Recommendations outline the importance of creating accessible media services for persons with disabilities and outline various methods such as subtitling, audio description, Ukrainian sign language, Simple Language, and Easy Read formats. The recommendations provide guidance on measuring the volume of accessible programming, ensuring the accessibility of official emergency communications – through, among other means, sign language interpretation, subtitling and audio description–, and present examples of media accessibility practices from different countries.</p> <p>Article 3 of the Law on State Support for Media, Guarantees of Professional Activity, and Social Protection of Journalists specifies that state-targeted support is provided to media providers that cater specifically to persons with disabilities.</p>
Article 7(2) AVMSD	
<p>Law on Media, Article 49</p>	<p>According to Article 49.2, audiovisual media providers (except for audio media providers) must submit a report to the National Council every three years on the accessibility of their services for persons with disabilities.</p>
Article 7(3) AVMSD	
<p>Law on Media, Articles 90 and 92</p>	<p>Jointly with the co-regulatory body, the National Council develops and approves an action plan to ensure the accessibility of services for persons with disabilities as provided (Article 90.1.50).</p> <p>According to Article 92.2.10, the co-regulation process must include an approval mechanism regarding the action plan designed to ensure the accessibility of services to persons with disabilities.</p>
Article 7(4) AVMSD	
<p>Law on Media, Articles 49 and 90</p>	<p>According to Article 49.1.4, every user has the right to submit appeals regarding the accessibility of services provided by audiovisual media providers for persons with disabilities.</p> <p>Article 90.1.57 obliges the National Council to create an effective mechanism on its official website for submitting appeals regarding the accessibility of services provided by audiovisual media providers for persons with disabilities.</p>

Ukrainian Legislation	Details
Article 7(5) AVMSD	
<p>Law on Media, Article 45</p> <p>Regulation on the Organization of Warning about the Threat of or Occurrence of Emergencies and the Organization of Communication in the Civil Protection Sphere, Articles 18 and 37</p>	<p>Media providers are therefore obliged to ensure the accessibility of official announcements through, among other things, but not limited to, dubbing official announcements in sign language or adding subtitles or audio description.</p> <p>The Regulation indicates that it is necessary to ‘take into account the specific features of warning persons with physical, mental, intellectual, and sensory impairments’.</p> <p>Additionally, Article 18 specifically requires that the delivery of signals, messages about the threat of or occurrence of emergencies to the population, as well as information, must be accompanied by sign language and/or subtitling and audio description depending on the case.</p> <p>Moreover, Article 37 of this regulation discusses the organization of warning and informing ‘persons with physical, mental, intellectual, and sensory impairments and other vulnerable groups of the population (persons accompanying them)’ by a range of stakeholders. In that context, it calls for the use of various technical means ‘that take into account the differentiation by types of disability limitations of people with disabilities (sound beacons, sound-light alarms, audio description means, subtitling, sign language interpreting, text message distribution, and other appropriate means)’.</p>
<p>Civil Protection Code of Ukraine Articles 21, 31, 33</p>	<p>According to Articles 21, 31, and 33 of the Civil Protection Code of Ukraine, civil protection authorities must provide the population with timely and reliable information about emergencies, threats, safe evacuation routes, and gathering points for relocation. This includes persons with disabilities and other people with limited mobility, and must be done through the media and “including in forms accessible to persons with visual and hearing impairments.”</p>

5.2. Overview of National Rules regulating Audiovisual Media Services

Types of accessibility measures	Brief overview of existing rules
Accessibility measures (hearing impairments)	<p>Subtitling: Yes.</p> <p>Sign language: Yes.</p> <p>The public audiovisual media service providers must ensure that at least 5% of the daily broadcast is made accessible through subtitling, or sign language interpretation and audio description.</p> <p>Specific requirements apply in the context of the all-Ukrainian referendum, and with regard to emergency information.</p>
Accessibility measures (visual impairments)	<p>Audio description: Yes.</p> <p>Spoken subtitles: None.</p>
Other accessibility measures (i.e. Simple Language and Easy Read format)	No.
Accessibility measures developed by self- or co-regulatory process	<p>Yes, co-regulation.</p> <p>The National Council will develop and approve an action plan, jointly with the co-regulatory body.</p>
Reporting to the National Council – frequency	<p>Yes.</p> <p>Audiovisual media providers (except for audio media providers) must submit a report to the National Council every three years.</p>
Designated point of contact for information and complaint	<p>No/Yes.</p> <p>The National Council is tasked with setting up an effective mechanism for receiving complaints. It is not indicated whether there is a specific point of contact to provide information on accessibility of audiovisual media services.</p>

5.3. Key Findings

The Law on Media is designed to integrate the minimum standards set out in the AVMSD in the Ukrainian legal order, aiming to align Ukraine's legislation with that of the EU as part of the accession process. Therefore, it should aim to ensure alignment with EU standards, enhance the regulation of various media services in the country, and most relevant to this study, ensure the accessibility of audiovisual media services to persons with disabilities.

In that respect, it is paramount to recall that even in the event of armed conflict, as the Ukrainian population is subjected to during the Russian war of aggression on Ukraine, certain international standards still apply. Therefore, States, including Ukraine, still have obligations under International Humanitarian Law, as well as obligations under other provisions of international law²⁰⁷. Indeed, it must be stressed that the CRPD is an international Treaty that 'applies at all times and does not allow for the derogation or suspension of its provisions during national emergency, foreign occupation, natural disaster or armed conflict'.²⁰⁸

Therefore, the CRPD remains pertinent 'across the entire peace continuum', including during armed conflict. In that sense, 'the rights and interests of persons with disabilities (including their right to have a voice in larger policy and other developments)' should be seen as relevant even during the conduct of a conflict²⁰⁹. On this basis, it is therefore necessary to highlight that CRPD provisions, including on accessibility, are applicable throughout the current conflict and should guide the action of the Ukrainian government, including in aligning its legislation to that of the EU – as for the AVMSD and the Law on Media. The rights of persons with disabilities to access audiovisual media services must be upheld at all times and must not suffer exceptions. This is especially relevant to the provision of accessible emergency information.

While the Law on Media **partially aligns** with the AVMSD in covering the accessibility of audiovisual media services, several points of non-alignment are recommended to be addressed. Additionally, with the AVMSD being a minimum harmonization directive, particular attention should be devoted to making sure that the Law on Media complies also with the CRPD and its interpretation by the CRPD Committee.

● Conceptualization of Persons with Disabilities

As mentioned previously, one of the shortcomings of the AVMSD is that it broadly conceptualises 'the definition of persons with disabilities in the context of audiovisual media services'. Additionally, while it refers to persons with disabilities in the main text, it tends to focus on limited formats of accessibility in the preamble.²¹⁰

In that respect, the Law on Media broadly refers to 'persons with disabilities' in some instances, like Article 3, which highlights the State's commitment to enhancing media accessibility for persons with disabilities by providing targeted support to media providers 'that dissem-

207 International Committee of the Red Cross, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions: Document Prepared by the International Committee of the Red Cross for the 33rd International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 9–12 December 2019' (2019) 101 *International Review of the Red Cross* 869.

208 UNGA, 'Rights of persons with disabilities: Report of the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn' (2021) A/76/146 para 10.

209 UNGA A/76/146 para 84.

210 Tudisco (n 35) 20.

inate media [...] for persons with disabilities'. Generally, the Law on Media neither provides a definition of disability nor recognises different types of disabilities. Therefore, accessibility provisions developed under the co-regulation process should benefit all persons with disabilities, including, for instance, persons with intellectual disabilities and not only those with hearing and/or visual impairments. Additionally, in the context of the Law on Media, 'persons with disabilities' should also be understood in line with the definition provided in the CRPD.

● Accessibility Means

When it comes to the accessibility tools used to make audiovisual media services accessible to persons with disabilities, the Law on Media refers mostly to subtitling, audio description and sign language interpretation – a range of accessibility means also foreseen in the preamble of the 2018 AVMSD. No provision addresses the use of spoken subtitles or Simple Language or Easy Read format. In line with the previous remarks, this makes it clear that the accessibility of audiovisual media services, as defined in the Law on Media, is only intended for people with hearing and/or visual impairments. However, this assessment does not factor in the accessibility measures being developed under the co-regulation process with the National Council, which are forthcoming.

Additionally, the 'Methodological Recommendations on Ensuring Barrier-Free Accessibility in the Media Sector' drafted by the Ministry of Culture and Information Policy are not mandatory in nature.

● Continuous and Progressive Implementation

As mentioned in this study, the AVMSD does not set out quantitative requirements to make audiovisual media services accessible and only states that services should be made 'continuously and progressively more accessible'. In that context, it has been common for Member States to impose such quantitative requirements in transposing the AVMSD. In this respect, the Law on Media does not contain these requirements.

The Law On Public Media of Ukraine obliges only the public media service providers to ensure that a minimum 5% of daily broadcasts are made accessible either through audio description, subtitling, or sign language translation.²¹¹

However, current legislation does not indicate whether such quotas will be revised and increased over the years, nor how regularly. In that sense, the Law on Media fails in approximating Article 7(1) AVMSD which explicitly indicates that audiovisual media services should be made **continuously and progressively more accessible**. Again, this assessment does not factor in the accessibility measures being developed under the co-regulation process with the National Council, which are forthcoming.

Additionally, qualitative obligations should not be discarded for the benefit of quantitative ones. In this respect, codes of best practice and quality assurance documents, which support audiovisual media services providers in implementing accessibility measures, should be developed together with OPDs to ensure optimum accessibility and best practice in terms of sign language, audio description, or spoken subtitles but also for simple and easy to understand language.

211 Art 17.5 Law on Media.

● Exemptions and Differentiated Obligations

As noted previously, Article 7(1) AVMSD obliges, in broad terms, Member States to ensure the progressive and continuous accessibility of services provided by media service providers under their jurisdictions. However, the specifics of how these obligations are implemented are left to each Member State's discretion, and some have introduced exemptions to accessibility requirements and applied varying standards depending on the type of media service provider.

In this regard, the Law on Media provides accessibility obligations that explicitly apply to the public audiovisual media service provider. However, no such legally binding obligations are imposed on private audiovisual media service providers, nor are on-demand service providers. It is also interesting to note that in terms of reporting, audiovisual media providers are obliged to submit a report to the National Council every three years on the implementation of accessibility measures.

● Development of Accessibility Measures and Action Plans

While Article 7 AVMSD sets general accessibility obligations so that persons with disabilities can access audiovisual content, Member States have had to incorporate such general provisions into national rules and followed different approaches – regulation, co-regulation and self-regulation. In this respect, the Ukrainian Law on Media introduces a co-regulation procedure.

It therefore calls for the development of an action plan, by the National Council and its co-regulatory bodies, to ensure the accessibility of services for persons with disabilities, although this was only encouraged in Article 7(3) AVMSD. There is no information indicating that this action plan is currently being developed.

● Reporting Process and Points of Contact

As mentioned prior, Article 7(2) AVMSD, touches upon reporting obligations, and provides that Member States shall ensure that audiovisual media service providers report on a regular basis to NRAs on the implementation of accessibility measures, and that in turn Member States report to the European Commission. In that respect, the Law on Media indicates that audiovisual media providers (except for audio media providers) are obliged to submit a report to the National Council every three years on the accessibility of their services for persons with disabilities (Article 49.2). As Ukraine is not an EU Member State, it appears logical that it does not mention the obligation to report to the European Commission every three years. As such, the Law on Media aligns with the AVMSD. However, it is interesting to note that a number of Member States impose a more regular (annual) reporting obligation on the media service providers under their jurisdiction. Such obligation might, in fact, contribute to better monitoring the accessibility of audiovisual media services.

Additionally, under Article 7(4) AVMSD, Member States must designate a 'single, easily accessible, including by persons with disabilities, and publicly available online point of contact for providing information and receiving complaints'. In this regard, the Law on Media indicates that every user has the right to submit appeals regarding **the accessibility of services** provided by audiovisual media providers for **persons with disabilities**. It further obliges the National Council to create an effective mechanism on its official website for submitting appeals regarding the accessibility of services provided by audiovisual media providers for persons with disabilities. In that respect, the Law on Media seems in line with Article 7(4) AVMSD in

so far as it mandates the creation of a complaint mechanism. However, it does not mention the existence or establishment of a point of contact to provide information on accessibility of audiovisual media services.

● **Emergency Information**

Finally, in terms of emergency information, the AVMSD provides in Article 7(5) AVMSD that emergency information shall be made available to the public through audiovisual media services in a manner that is accessible to persons with disabilities. In that respect, the Law on Media, states that linear media providers must ensure the accessibility of official announcements during emergencies through ‘language of signs’, subtitles, and audio description, among other means. Seemingly in alignment with the AVMSD on that point, the Law on Media is further complemented in this respect by various legislation and rules, including the Civil Protection Code of Ukraine, or the Regulation on the Organization of Warning about the Threat of or Occurrence of Emergencies and the Organization of Communication in the Civil Protection Sphere.

6. Main Recommendations

To ensure alignment with the AVMSD:

- The definition of persons with disabilities that the Law on Media follows must be in line with the CRPD;
- Accessibility means must not be focused only on addressing sensory disabilities;
- Particular attention must be given to making audiovisual content accessible for persons with intellectual disabilities through the provision of accessibility measures in Simple Language/Easy Read format, for instance;
- In developing accessibility measures, it is essential to consult and involve OPDs in the process to ensure best practices are set out for media services providers to implement;
- Adopt a gradual increase (year-on-year) of quantitative and qualitative obligations for broadcast and for on-demand services;
- Exemptions and differentiated obligations (public/private, linear/non-linear) should be avoided;
- The National Council must undertake regular and rigorous monitoring, as well as encourage media providers to go beyond the statutory requirements provided in the Law on Media;
- The National Council should be provided with investigatory and sanction powers;
- The National Council and other government stakeholders should regularly take part in exchanges of best practices with other states, especially EU Member States;
- Emergency information must be made accessible for persons with disabilities via audiovisual media services, without exception, including through Simple Language/Easy Read format, especially in the context of the war.

7. Concluding Remarks

With Ukraine being a candidate country to the EU, it is essential to assess the alignment process thoroughly. This study considered the concept of accessibility, the genesis of the AVMSD and the Law on Media, as well as their respective contents and approaches to the rights of persons with disabilities. In doing so, it presented an interesting background for assessing the compatibility of the Law on Media with the AVMSD, and particularly Article 7 AVMSD. Moreover, it has provided relevant examples of implementation of Article 7 AVMSD in various EU Member States, offering valuable reference points for the analysis of the Law on Media and the other relevant laws and regulations addressing the accessibility of audiovisual media services for persons with disabilities in Ukraine. The study therefore participates in framing Ukraine's action in terms of accessibility, and more particularly its potential limits, with regards both to the AVMSD and to some extent the CRPD.

Although Ukrainian legislation was found by the European Commission to be broadly in line with the AVMSD²¹², this study outlines the need to adopt a disability lens. Taking this perspective has facilitated a more precise assessment of the Law on Media, and revealed current shortcomings with regards to the accessibility of audiovisual media services. It should be remedied to better approximate the provisions of the AVMSD, and, ultimately, to best benefit persons with disabilities accessing audiovisual media services.

As mentioned in the introduction, the implementation of accessibility is complex and, in that sense, it is interesting to recall that 'accessibility works as a chain, which requires the proper functioning of each of the links, and of all the links together, for it to become effective'²¹³. In contrast with the EU that has a limited set of competences, Ukraine has the possibility to take a more holistic and ambitious approach to guaranteeing accessibility of audiovisual and other media services for persons with disabilities. It is, therefore, essential that Ukraine's next actions are guided by the objective of ensuring the provision of accessible audiovisual media services to persons with disabilities, and particularly 'with the necessary quality and to the appropriate extent and within a reasonable time period', as the CRPD Committee highlighted.²¹⁴

Media possess strong political and democratic significance, therefore it is paramount that persons with disabilities enjoy accessible audiovisual media services so as to take part, for instance, in public and political life in the capacity of their choice. Indeed, to guarantee accessible audiovisual media services is to enable many persons with disabilities to be informed, as voters and citizens but also as candidates, elected officials and mandate holders.

212 European Commission, '[Ukraine 2024 Report](#)' (Staff Working Document accompanying the 2024 Communication on EU Enlargement policy, 2024) SWD(2024) 699 final, 73.

213 Charitakis (n 38) 230.

214 CRPD Committee, 'List of issues prior to submission of the second and third periodic reports of the European Union' (2022) CRPD/C/EU/QPR/2-3, para 31(a).

