



## Independent Media Council

# Input for the Special Rapporteur's report on disinformation

### 1. Key challenges raised by disinformation

*What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?*

Media play an essential role in upholding democratic processes and developing a society of informed citizens. However, nowadays the challenges the public faces are the spread of disinformation, propaganda, and hate speech in the media. Due to digital technologies fakes, misrepresentation, manipulation, and conspiracy theories can spread easily on a very large scale. All of this leads to the manipulation of public opinion at the massive scale and significantly affects democratic institutions.

**Key challenges raised by disinformation are the following:**

- a) **The threat to national security.** Since 2014 Ukraine has been in a state of armed conflict due to the aggression of the Russian Federation, the occupation of Crimea and some districts of Luhansk and Donetsk regions<sup>1</sup>. Besides armed conflict, the Russian Federation is waging an information war. The Ukrainian information space is full of Russia-backed content that denies the territorial integrity of the state, undermines legitimacy of Ukrainian independence and dehumanises Ukrainian nation. Moreover, some media have been systematically spreading Russian propaganda based on lies, falsifications and distortion of historical facts on Russia-Ukraine relations in order to create an image of "enemy" in the face of the Ukrainian society and justify Russian aggression in Ukraine<sup>2</sup>.
- b) **Manipulation of public opinion during the elections.** Ukrainians received information about the candidates and the process of the presidential and parliamentary elections in 2019, as well as the local elections in 2020 from the media. However, some media abused public trust, incorrectly covered opinion polls and held hidden manipulation campaigns for or against certain politicians<sup>3</sup>. Such violations of the -ethics and standards of journalism impeded Ukrainian citizens from making informed decisions.

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<sup>1</sup> Website of Permanent Mission of Ukraine to the United Nations – Russian aggression [<https://ukraineun.org/en/ukraine-and-un/russian-aggression/>]

<sup>2</sup> IMC's conclusion on hate speech on NewsOne TV channel as of December 10, 2018 [<https://mediarada.org.ua/case/rozpalyuvannya-vorozhnechi-v-efiri-telekanalu-newsone-protyahom-31-serpnya-17-zhovtnya-2018-roku/>]

<sup>3</sup> IMC's resolution on the media activities during the presidential election as of June 7, 2019 [<https://mediarada.org.ua/news/rezolyutsiya-nezalezhoji-medijnoji-rady-schodo-diyalnosti-media-pid-chas-prezydentskyh-vyboriv/>], IMC's conclusion on compliance with election coverage standards and possible abuses of freedom of speech by NewsOne TV channel as of September 4, 2019 [<https://mediarada.org.ua/case/newsone/>]

- c) **Amplifying hate speech.** Also, media used disinformation and false stereotypes for spreading hateful messages and incitement to discrimination and hatred against various minority groups (in particular, Crimean Tatars<sup>4</sup> and Jews<sup>5</sup>). In addition, pro-Russian media manipulated the facts to spread hate speech against Ukrainian civic activists, participants of the Revolution of Dignity and representatives of Ukrainian military forces in eastern Ukraine<sup>6</sup>. Hate speech, in turn, can exacerbate social tensions in society.
- d) **The threat to human health during the COVID-19 pandemic.** In situations related to the life and health of society, true information on the part of mass media is ultimately needed. However, the COVID-19 pandemic caused infodemic – the flood of false or misleading information in digital and physical environments during a disease outbreak. It leads to mistrust in health authorities and undermines the public health response<sup>7</sup>. According to the monitoring analysis, conducted on March 16, 17 and 18, 2020 in 17 national online media, around 58.5% of the total amount of materials was devoted to the topic of COVID-19 and the consequences of the infection. Of these, 15% were constructive, 5% had emotional headlines, and another 5% contained journalists' evaluative judgments<sup>8</sup>. Now, some media continue to spread conspiracy theories that contribute to people's ignorance of how to protect their health.

**In order to combat disinformation and its negative consequences, states should use appropriate countermeasures, including where necessary legal prohibition of the following types of content:**

- information containing incitement to war, armed conflict, or violation of the territorial integrity of the country, as well as intentional public justification of such actions;
- statements inciting national, racial or religious hatred or hatred towards individuals from the protected groups, as well as statements that are discriminatory against individuals or groups on the basis of ethnic origin, race, religion, age, sex, physical disabilities, sexual orientation or other grounds;
- intentional, massive and systemic disinformation (e.g. information that has both the dimension of falsity and the dimension of harm),<sup>9</sup> which can trigger aggravated consequences, such as constituting a real threat to public order or public health.

It is extremely important that any above-mentioned restrictions of freedom of expression are based on the law, pursue a legitimate aim (national security, upholding the rights of others, public order or public health) and are necessary in a democratic society (restrictions should be narrowly tailored and proportionate).

Control over compliance with such restrictions may be exercised through a co-regulatory mechanism – cooperation of the state represented by the national regulator in the media field (in Ukraine it is the National Television and Radio Broadcasting Council of Ukraine), and media sector represented by an independent self-regulatory body (in Ukraine, the Independent Media Council and the Commission on Journalism Ethics play this role).

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<sup>4</sup> IMC's conclusion as of September 26, 2016 [<https://mediarada.org.ua/case/vypusk-peredachi-vidkrytyj-mikrofon-na-radio-aks-vid-25-kvitnya-2016-roku/>]

<sup>5</sup> IMC's conclusion as of February 28, 2018 [<https://mediarada.org.ua/case/38/>], IMC's conclusion on telemarathon "Sorosist Revenge" on ZIK TV channel as of December 21, 2020 [<https://mediarada.org.ua/case/grant-receivers-zik/>]

<sup>6</sup> IMC's conclusion on compliance with election coverage standards and possible abuses of freedom of speech by NewsOne TV channel as of September 4, 2019 [<https://mediarada.org.ua/case/newsonetv/>]

<sup>7</sup> World Health Organization's website – Infodemic [[https://www.who.int/health-topics/infodemic#tab=tab\\_1](https://www.who.int/health-topics/infodemic#tab=tab_1)]

<sup>8</sup> How COVID-19 is covered by online media – IMI Monitoring [<https://imi.org.ua/monitorings/yak-onlajn-media-vysvitlyuyut-covid-19-monitoring-imi-i32341>]

<sup>9</sup> C Wardle, H Derakhshan, *Information Disorder. Toward an interdisciplinary framework for research and policymaking* (Council of Europe 2017) p.5. [<https://rm.coe.int/information-disorder-report-version-august-2018/16808c9c77>]

## 2. Governmental measures to counter disinformation

*What legislative, administrative, policy, regulatory or other measures has the Government taken to counter disinformation online and offline? What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights? What measures have been taken to address any negative impact on human rights?*

At the moment, the Ukrainian legislation does not regulate disinformation. Ukrainian laws establish the term "untrue information" and journalists' positive obligation to disseminate objective information, but do not establish liability for violating such a duty. However, some laws prohibit the dissemination of information (including disinformation) that may threaten national security, public order or public health, as well as incite hatred. Such restrictions apply mainly to broadcasting organisations – in case of violation they can be fined, deprived of their licenses and held administratively liable (in particular, for violation of election legislation). In 2020, there were several legislative initiatives aimed at regulating disinformation on the Internet: some of them were rejected, the rest are pending.

First of all, Article 34 of the Constitution of Ukraine provides that the exercise of right to freedom of expression may be restricted by law in the interests of national security, territorial integrity or public order, in order to prevent disturbances or crimes, protect public health, the reputation or rights of others, prevent the disclosure of confidential information or support impartiality of justice<sup>10</sup>.

**Protection of national security.** Due to the occupation of Crimea by the Russian Federation and further aggression on the certain territories of the Donetsk and Luhansk regions of Ukraine<sup>11</sup>, it became necessary to take appropriate measures to protect the information space of Ukraine from content that promotes war and denies the territorial integrity of Ukraine. For this purpose, a number of amendments to Ukrainian legislation were adopted. Currently, in order to protect the legitimate interests of national security as well as the rights and interests of individuals Ukrainian laws provide for the following limitations:

- prohibition for broadcasting organisations to call for a change of the constitutional order of Ukraine by violent means, war or aggressive actions or promoting such ideas (article 6 of Law on Television and Radio Broadcasting<sup>12</sup>);
- since 2015, prohibition of broadcasting television programs which were produced after 1 August 1991 and which popularise the aggressor state's public authorities as well as its actions or justify or legitimise the occupation of the Ukrainian territories (article 6 of the Law on Television and Radio Broadcasting and Article 15-1 of the Law On Cinematography<sup>13</sup> which sets clear criteria for the materials that popularise the aggressor state);
- since 2015, prohibition of broadcasting any audio-visual materials which contain a denial of or justification of the criminal nature of the communist totalitarian regime of 1917-1991 in Ukraine, which create a positive image of leaders of the communist party, justifies the activities of the Soviet Security Services and persecution of participants of the struggle for Ukraine's independence in the XX century (Article 9 of the Law On Television and Radio Broadcasting<sup>14</sup> and

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<sup>10</sup> Article 34 of the Constitution of Ukraine [<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/conv#n4269>]

<sup>11</sup> Appeal of the Verkhovna Rada of Ukraine to the United Nations, European Parliament, Parliamentary Assembly of the Council of Europe, NATO Parliamentary Assembly, OSCE Parliamentary Assembly, GUAM Parliamentary Assembly and national parliaments of the countries of the world on the recognition of the Russian Federation as an aggressor state [<https://zakon.rada.gov.ua/laws/show/129-19#Text>]

<sup>12</sup> Article 6 of the Law of Ukraine On Television and Radio Broadcasting [<https://zakon.rada.gov.ua/laws/show/3759-12/conv#n143>]

<sup>13</sup> Article 15-1 of the Law of Ukraine On Cinematography [<https://zakon.rada.gov.ua/laws/show/9/98-%D0%B2%D1%80/conv#n242>]

<sup>14</sup> Article 9 of the Law of Ukraine On Television and Radio Broadcasting [<https://zakon.rada.gov.ua/laws/show/3759-12/conv#n194>]

Article 3 of the Law on Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of their Symbols<sup>15</sup>).

- prohibitions for foreign states, foreign legal entities or individuals and other persons to engage in activities which threaten national interests, national security, sovereignty and territorial integrity of Ukraine, promote terrorist activities and/or violate human and civil rights and freedoms, lead to the occupation of the territory, create obstacles for the Ukrainian citizens to fully exercise their rights and freedoms (Article 3 of the Law On Sanctions)<sup>16</sup>. Ukraine may penalise such violations with targeted sanctions against certain persons posing threat to national security. The sanctions are adopted by the National Security Council of Ukraine (collegial body) and are further approved by the Decree of the President of Ukraine.

For violation of some of these restrictions, the National Council on Television and Radio Broadcasting has the right to impose the following sanctions on television and radio broadcasting organisations: warning, fines and initiation of the broadcast license revocation in court<sup>17</sup>.

For example, during 2019 and 2020, the National Council on Television and Radio Broadcasting fined the NewsOne TV channel for incitement to aggressive war, propaganda of war and incitement to national, racial or religious hatred– the fines of 96 thousand hryvnias in 2019, 105 thousand hryvnias in 2020 (about € 3,000). The fact is that a number of television programs of this channel contained disinformation: information that denied the presence of Russian troops on the territory of Ukraine, justification of the actions of the aggressor state against the territorial integrity of Ukraine, promotion of the idea of Ukraine being an aggressor against part of its own territory, false statements about persons involved in the anti-terrorist operation, false statements about the ideological orientation of Ukrainian leaders (fascism and national socialism) and part of the population of the country, etc.<sup>18</sup> It is noteworthy that both decisions on fines were made on the basis of the conclusions of the Independent Media Council – a self-regulatory body in the field of media, which consists of representatives of the leading media organizations in the country and carries out independent assessment of the controversial cases in the Ukrainian media sector<sup>19</sup>.

In total, the number of sanctions against the NewsOne TV channel exceeded 10 and the broadcaster did not seize violations of the law. Due to this, in 2019, the National Council on Television and Radio Broadcasting even appealed to the court to revoke the license of the NewsOne TV channel<sup>20</sup>. Among the main arguments for revoking the license the National Council indicated spreading hate speech, false or misleading statements regarding the participants of the anti-terrorist operation in eastern Ukraine, including comparing them with fascists (while according to the case law of the European Court of Human Rights identifying someone with the Nazis in the context of an armed conflict incites hatred<sup>21</sup>), as well as incomplete and biased information regarding the armed conflict with Russian Federation, which violates the Ukrainian laws and Council of Europe Recommendation No. R (97) 20 of the Committee of Ministers to member states on “hate speech”<sup>22</sup>.

<sup>15</sup> Article 3 of the Law of Ukraine On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of their Symbols [<https://zakon.rada.gov.ua/laws/show/317-19/conv#n37>]

<sup>16</sup> Article 3 of Law of Ukraine On Sanctions [<https://zakon.rada.gov.ua/laws/show/1644-18/conv#n16>]

<sup>17</sup> Article 72 of the Law of Ukraine On Television and Radio Broadcasting [<https://zakon.rada.gov.ua/laws/show/3759-12/conv#n990>]

<sup>18</sup> The National Council's decision as of February 7, 2019 [<https://www.nrada.gov.ua/telekanal-newsone-povnyen-splatyty-shtraf/>] and the National Council's decision regarding NewsOne TV channel as of February 27, 2020 [<https://www.nrada.gov.ua/za-poshyrennya-movy-vorozhnechi-telekanal-newsone-otrymav-poperedzhennya-vid-regulyatora-maye-splatyty-ponad-sto-tysyach-gryven-shtrafu/>]

<sup>19</sup> IMC's conclusion on hate speech on NewsOne TV channel as of December 10, 2018 [<https://mediarada.org.ua/case/rozpalyuvannya-vorozhnechi-v-efiri-telekanalu-newsone-protayahom-31-serpnya-17-zhovtnya-2018-roku/>] and IMC's conclusion regarding NewsOne TV channel as of January 30, 2020 [<https://mediarada.org.ua/case/tv-program-i-think-so/>]

<sup>20</sup> The National Council will apply to the court to revoke the license of NewsOne TV channel [<https://www.nrada.gov.ua/natsionalna-rada-zvernetsya-sudu-pro-anulyuvannya-litsenziyi-telekanalu-newsone/>]

<sup>21</sup> Sürek v. Turkey, Application no. 26682/95 [<http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58270&filename=001-58270.pdf>]

<sup>22</sup> Recommendation No. R (97) 20 of the Committee of Ministers to member states on “hate speech” [[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680505d5b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b)]

The imposition of such sanctions is necessary in a democratic society in order to combat incitement to hatred, ensure national security in the face of an ongoing armed conflict and foreign aggression, uphold professional and ethical standards in the media. However, the small amount of fines cannot deter the media from violating the laws. And, unfortunately, "revival of fascism in Ukraine" remains one of the main themes of the Russian propaganda against Ukraine. Russia-backed media continue to distort historical facts on the Ukrainian struggle for independence, disseminate inaccurate information on the support of historical and actual Nazi movements in Ukraine by the authorities in order to create a hostile attitude towards Ukraine and its citizens.

**Protection of democratic elections.** Since the beginning of 2020, the new Electoral Code of Ukraine has entered into force. Together with the Code of Ukraine of Administrative Offenses, it provides for certain rules for covering election campaigns in the media:

- news agencies and the media should disseminate information about the election process based on the principles of reliability, completeness and accuracy, impartiality and objectivity of information. It is forbidden to conceal the necessary election information and distort the information (Article 49 of the Electoral Code of Ukraine<sup>23</sup>);
- prohibition for media to engage in hidden agitation (Article 51 of Electoral Code of Ukraine<sup>24</sup>);
- prohibition for employees of media and news agencies to violate campaigning procedures established by the law and give preference in TV, radio programs or printed mass media to any candidate, political party or their election programs (Articles 212-9 and 212-10 of the Code of Ukraine of Administrative Offenses<sup>25</sup>).

In fact, the new Electoral Code contains certain gaps and needs to be further improved – it does not provide for liability for hidden agitation. Currently, the National Council on Television and Radio Broadcasting issues warnings to broadcasting organisations on the basis of the Law on Television and Radio Broadcasting and administrative fines to the employees of the broadcasting organisations on the basis of the Code of Administrative Offenses. To be precise, the National Council only draws up administrative protocols on violations of election law while decisions on establishing administrative responsibility are made by the court.

According to the NDI's report, disinformation, especially pro-Russian disinformation narratives, remained a threat to the integrity of the information space during the 2020 local elections. Such disinformation aimed at questioning the legitimacy of the Ukrainian state and government, weakening Ukraine's ties with its Western partners, and improving the image of the Russian government. Instead of covering the election process, such disinformation campaigns were more likely to repeat narratives that could lead to a distorted perception of politics in Ukraine<sup>26</sup>.

In order to counter pro-Russian disinformation within the local elections 2020 the National Council on Television and Radio Broadcasting prepared more than 40 administrative protocols on violations of election law<sup>27</sup>, including for misrepresenting biased judgments about a candidate or a party as an

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<sup>23</sup> Article 49 of the Electoral Code of Ukraine [<https://zakon.rada.gov.ua/laws/show/396-20/conv#n440>]

<sup>24</sup> Article 51 of the Electoral Code of Ukraine [<https://zakon.rada.gov.ua/laws/show/396-20/conv#n462>]

<sup>25</sup> Articles 212-9 and 212-10 of the Code of Ukraine of Administrative Offences [<https://zakon.rada.gov.ua/laws/show/80731-10/conv#n2556>]

<sup>26</sup> NDI Ukraine Local Election Statement - October 2020 [<https://www.nrada.gov.ua/ndi-pidgotuvav-zvit-za-rezultatamy-mistsevyh-vyboriv/>]

<sup>27</sup> For violating the election legislation the National Council drew up 48 administrative protocols [<https://www.nrada.gov.ua/za-porushennya-vyborchogo-zakonodavstva-natsionalna-rada-zagalom-pryznachyla-32-pozaplanovi-perevirky-sklala-48-adminprotokoliv/>]

objective news materials, biased materials about a politician or political party, publication of opinion polls with conscious overstatement or understatement of ratings of a certain party or politician, etc.<sup>28</sup>

Such activities in response to violations of election law are necessary in a democratic society to secure integrity of democratic elections, avoid any rigging, uphold professional and ethical standards in the media. However, they are not sufficient. Due to gaps in the Electoral Code, the National Council on Broadcasting cannot effectively respond to violations of election laws and impose administrative fines. Moreover, fines in the amount of 1,700-8,500 hryvnias (from €50 to €250) can only affect regional media and cannot deter the large media groups from violating the laws.

**Protection of rights of others.** Despite the fact that Ukrainian laws do not directly regulate hate speech, they provide for the following restrictions:

- prohibition for broadcasting organisations to engage in propaganda of exclusiveness or inferiority of persons on the basis of their religious beliefs, ideology, their ethnic affiliation or race, physical state or material status, social origin (article 6 of the Law of Ukraine On Television and Radio Broadcasting<sup>29</sup>);
- information shall not be used to call for the breach of territorial integrity of Ukraine, propaganda of war, violence, instigation of inter-ethnic, racial, religious hatred; perpetration of terroristic acts, infringement of human rights and liberties (Article 28 of the Law On Information<sup>30</sup>);
- print media in Ukraine shall not be used to incite ethnic, national and religious hatred (Article 3 of the Law On Print Media (Press) in Ukraine<sup>31</sup>).

For violation of these restrictions, the National Council on Television and Radio Broadcasting has the right to impose the following sanctions on television and radio broadcasting organisations: warnings, fines and initiation of the broadcast license revocation in court<sup>32</sup>.

For example, in 2018 the National Council fined the Inter TV channel for humiliation of the dignity of the citizens of Ukraine, incitement of hatred, calls for the breach of the territorial integrity of the state and propaganda which creates a distorted view of certain aspects of Ukrainian history – for 4 million hryvnias, which was the maximum amount of the fine (25% of the license fee, about €120,000)<sup>33</sup>.

Fines were imposed on the basis of the decisions of a self-regulatory body in the field of media - Independent Media Council.

This is not the only case of a fine imposed on media for hate speech. Specifically, in 2018, the National Council on Broadcasting fined the A1 and GNews TV channels in the Odessa region for a TV program about the activities of a Syrian businessman and inciting religious and racial hatred – 23 and 70 thousand hryvnias (around €680 and €2,000 respectively)<sup>34</sup>. In 2020, the National Council fined the Maxi TV channel for deceptive statements about the Revolution of Dignity, the annexation of Crimea and armed conflict in

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<sup>28</sup> The National Council considered the new violations committed by the media in the coverage of the election campaign [<https://www.nrada.gov.ua/novi-porushennya-yakyh-prypuskayutsya-media-pry-vysvitlenni-vyborchoyi-kampaniyi-takozh-skargy-na-yih-diyalnist-rozglyanuly-na-zasidanni-robochoyi-grupy/>]

<sup>29</sup> Article 6 of the Law of Ukraine On Television and Radio Broadcasting [<https://zakon.rada.gov.ua/laws/show/3759-12/conv#n143>]

<sup>30</sup> Article 28 of the Law of Ukraine On information [<https://zakon.rada.gov.ua/laws/show/2657-12/conv#n184>]

<sup>31</sup> Article 3 of the Law of Ukraine On Print Media (Press) in Ukraine [<https://zakon.rada.gov.ua/laws/show/2782-12/conv#n21>]

<sup>32</sup> Article 72 of the Law of Ukraine On Television and Radio Broadcasting [<https://zakon.rada.gov.ua/laws/show/3759-12/conv#n990>]

<sup>33</sup> The National Council's decision regarding the Inter TV channel as of July 11, 2018 [<https://www.nrada.gov.ua/telekanal-inter-maye-splatyty-ponad-4-mln-gryven-shtrafu-za-rozpalyuvannya-vorozhnechi-v-efiri-9-go-travnnya/>]

<sup>34</sup> The National Council's decision regarding Odessa TV channels as of August 29, 2018 [<https://www.nrada.gov.ua/odeski-telekanaly-a1-gnews-mayut-splatyty-shtrafy-za-rozpalyuvannya-religijnyi-rasovoyi-vorozhnechi/>]

the east of the state, as well as for incitement of national hatred – 105 thousand hryvnias (around €3,100)<sup>35</sup>.

The imposition of such sanctions is necessary in a democratic society in order to combat incitement to hatred, ensure national security in the face of an ongoing armed conflict and foreign aggression, uphold professional and ethical standards in the media.

**Protection of public order.** In order to protect the public order, Article 173-1 of the Code of Ukraine of Administrative Offences establishes administrative liability for spreading false rumours that can cause panic among the population or disturb public order, in particular, fines in the amount of 170-255 hryvnias (around €5-7)<sup>36</sup>. This provision is not new, it has been part of the Code for many years.

Based on this Article, from March 12 to May 18, 2020, Ukrainian courts considered and resolved 89 administrative cases on distribution of coronavirus fake news. Fines were issued to ordinary citizens who spread on social networks fake news claiming absence of coronavirus in Ukraine or, conversely, the spread of coronavirus in Ukraine at a huge unrealistic scale. However, among the fined offenders there were no media or politicians or website owners, who spread fakes on the COVID-19 pandemic on a daily basis<sup>37</sup>.

The afore said administrative sanction is necessary in a democratic society to ensure public order, especially during the COVID-19 pandemic, but it is not considered sufficient. Fact-checking organizations are working to amend the above-mentioned Article of the Code of Ukraine on Administrative Offences – they may want to add administrative liability not only for false, but also for misleading statements that may lead to a violation of public order, as well as increase the amount of fines.

**Lack of any sensible regulation of online media.** Currently, the National Council on Television and Radio Broadcasting as the national regulator in the media field can carry out monitoring of the television and radio space of Ukraine and in case of violation, -impose such sanctions as warnings, fines or, in case of systematic nature of violations, initiate the broadcast license revocation in court. However, the National Council has no mechanisms or authority to monitor the Internet space of Ukraine and to counter Russian disinformation online.

In order for the National Council to properly protect Ukraine's information space, bill #2693-d on Media needs to be adopted<sup>38</sup>. The bill aims to harmonize Ukrainian legislation with the EU Audio-visual Media Services Directive, define online media, non-linear media (such as Netflix) and information-sharing platforms (such as Facebook, YouTube, Twitter, TikTok) and provide for voluntary registration option and certain rules for such media. Therewith the National Council will not have excessive powers to close online media or anything similar: all restrictions or the blocking of online resources will be allowed only through the courts. This is in line with the Manila Principles<sup>39</sup> and the case law of the European Court of Human Rights. Moreover, the bill establishes a co-regulation mechanism, in particular, within this mechanism the National Council and representatives of media can develop the criteria for determining disinformation.

**In conclusion**, all restrictions on freedom of expression provided by the current Ukrainian laws have a legitimate purpose of ensuring national security in the face of an ongoing armed conflict and foreign aggression, or protecting democratic elections, rights of others or public order, and are proportionate and targeted.

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<sup>35</sup> The National Council's decision regarding the Maxi TV channel as of January 9, 2020 [<https://www.nrada.gov.ua/telekompaniyi-maksi-tv-zastosovano-sanktsiyi-ogoloshennya-poperedzhennya-ta-styagnennya-shtrafu-v-sumi-ponad-sto-tysyach-gryven-za-poshyrennya-movy-vorozhnechi/>]

<sup>36</sup> Article 173-1 of the Code of Ukraine on Administrative Offences [<https://zakon.rada.gov.ua/laws/show/80731-10/conv#n1863>]

<sup>37</sup> Start of fines for fake news about the coronavirus [<https://coronafakes.com/truth/za-feyky-pro-koronavirus-pochaly-shtrafuvaty/>]

<sup>38</sup> Bill #2693-d On Media as of July 22, 2020 [[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69353](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69353)]

<sup>39</sup> Manila Principles on Intermediary Liability [[https://www.eff.org/files/2015/10/31/manila\\_principles\\_1.0.pdf](https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf)]

### 3. Digital tech companies' measures to counter disinformation

*What policies, procedures or other measures have digital tech companies introduced to address the problem of disinformation? To what extent do you find these measures to be fair, transparent and effective in protecting human rights, particularly freedom of opinion and expression? What procedures exist to address grievances and provide remedies for users, monitor the action of the companies, and how effective are they?*

Facebook is the most popular social media in Ukraine, with increasingly bigger coverage and the number of users. Through this network, media and users can instantly spread disinformation, including conspiracy theories on the COVID-19 pandemic, fake news regarding the annexation of the Crimea and armed conflict in eastern Ukraine, and publish misleading political advertising. However, Facebook provides some tools to counter disinformation and Russian propaganda more specifically.

**Facebook prohibits foreign-funded political advertising in Ukraine.** In 2019, Facebook began temporarily disallowing electoral ads purchased from outside the country ahead of the presidential and parliamentary elections in Ukraine. Such tools helped to make political advertising on Facebook more transparent, prevent foreign interference in democratic elections, especially Russian disinformation. In addition, Facebook launched Ad Library – a publicly searchable library of ads for up to seven years, which were used by Ukrainian NGO, in particular for tracking those political parties that spread disinformation<sup>40</sup>.

**Facebook removes coordinated inauthentic behaviour in Ukraine.** In response to the users' content-removal requests Facebook can hide or remove content from its platforms if it goes against Facebook Community Standards<sup>41</sup>. On a monthly basis, Facebook detects and removes from its platforms fake and original accounts which are involved in coordinated efforts to manipulate public debate for a strategic goal. For example, according to the December 2020 report, Facebook removed 27 Facebook accounts, 37 Pages, 21 Groups and 13 Instagram accounts that originated in Ukraine and associated with both the European Solidarity party and NGO Sprava Hromad. This network used fake accounts to create fictitious personalities and disseminate positive comments about ex-president Petro Poroshenko and his party and negative comments about current president Volodymyr Zelensky<sup>42</sup>.

Such tools helped to counter disinformation spread by the fake accounts. It is especially important ahead of the election campaigns in Ukraine. In March 2019, prior to the first round of the presidential election in Ukraine, Facebook reported removing around 2 thousand pages, groups, and accounts, which posted content about Ukrainian news and politics but were linked to Russia, for engaging in spam and inauthentic behaviour.<sup>43</sup> And prior to the 2020 local elections, Facebook also removed fake accounts created in Russian Federation but targeting the audience of Ukraine<sup>44</sup>.

Hiding or removing content which violates the Facebook Community Standards could be a necessary tool, in particular, to avoid hate speech, violation of individual rights and disinformation. However, for this purpose Facebook Community Standards have to be human rights compliant.

Sometimes Facebook can hide or remove legitimate content from its platforms in Ukraine. In such cases, users have the right to request a review, and follow up if Facebook got decisions wrong. If after reviewing users still do not agree with Facebook's decision, he or she may be able to appeal to the Oversight Board

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<sup>40</sup> Facebook: Expanding Our Efforts to Protect Elections in 2019 [<https://about.fb.com/news/2019/01/elections-2019/>]

<sup>41</sup> Facebook Community Standards [<https://www.facebook.com/communitystandards/>]

<sup>42</sup> Facebook: December 2020 Coordinated Inauthentic Behavior report [<https://about.fb.com/news/2021/01/december-2020-coordinated-inauthentic-behavior-report/>]

<sup>43</sup> Facebook: Removing Coordinated Inauthentic Behavior as of March 26, 2019 [<https://about.fb.com/news/2019/03/cib-iran-russia-macedonia-kosovo/>]

<sup>44</sup> Facebook: Removing Coordinated Inauthentic Behavior as of September 24, 2020 [<https://about.fb.com/news/2020/09/removing-coordinated-inauthentic-behavior-russia/>]



– a formally independent body reviewing Facebook’s and Instagram’s content moderation decisions and consisting of various experts from all over the world.

**Facebook Oversight Board receives public consultations from Ukrainian NGO.** In 2020 the self-regulatory body in the field of media, Independent Media Council, filed its proposals with Facebook’s Oversight Board regarding review and moderation of hate speech complaints made in the course of international or non-international armed conflicts, on the OB case 2020-003-FB-UA. In particular, Independent Media Council paid attention to the importance to differentiate between international or non-international armed conflicts in terms of likeliness of harm inflicted on the community/nation/individuals targeted by a Facebook post or online expression related to an ongoing conflict while assessing such expression<sup>45</sup>.

In conclusion, to counter disinformation, find and remove illegal content and prevent violations of freedom of expression cooperation between Facebook, fact-checking organizations and local civil society organizations is important. Moreover, providing public consultations to the Facebook Oversight Board could be one of the tools for understanding the specificities of local contexts, ensuring diversity of experiences and opinions, based on which Facebook content moderation decisions should be made. Oversight Board can urge Facebook to review certain policies of online content moderation and bring these policies in line with established standards in the sphere of human rights and fundamental freedoms.

#### **4. Positive measures to counter disinformation**

*Please share information on measures that you believe have been especially effective to protect the right to freedom of opinion and expression while addressing disinformation on social media platforms.*

The Ukrainian legislation does not regulate disinformation or establish any rules for social platforms. However, Ukraine has positive examples of cooperation between Facebook and the Ukrainian government with a common purpose to combat disinformation on social platforms.

In 2018 Facebook removed a page that was related to a “locally designated terrorist organization” in response to the content-removal request from the Ministry of Information Policy of Ukraine to counter fake news and Russian propaganda<sup>46</sup>. In its request, the Ministry called on Facebook to block public pages and groups associated with the so-called DNR (The Donetsk People's Republic) and LNR (The Luhansk People's Republic), which are recognized as terrorist organizations in accordance with the Ukrainian laws. The Ministry argued that such restriction as removing the pages meets the three criteria of legality, proportionality and necessity<sup>47</sup>.

##### **Promotion of media co-regulation.**

Since December 2015, the Independent Media Council functions in Ukraine, it is an impartial and professional self-regulation body in the media field, established by five Ukrainian civil society organizations and consisting of 15 members, equally delegated from these organisations<sup>48</sup>.

Since its founding, the Independent Media Council has reviewed controversial situations in the Ukrainian media sector regarding compliance with media laws, in particular, Law on Television and Radio Broadcasting, international media law standards, and violations of journalistic ethics. The Independent

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<sup>45</sup> Why have CEDEM and the IMC appealed to Facebook’s Oversight Board with an intervention? [<https://cedem.org.ua/en/news/appeal-to-fb-oversight-board/>]

<sup>46</sup> Facebook: Country overview - Ukraine [<https://transparency.facebook.com/content-restrictions/country/UA>]

<sup>47</sup> The Ministry requested Facebook to block Ukrainian activists and spread Russian propaganda [<https://mip.gov.ua/news/2488.html>]

<sup>48</sup> The Independent Media Council’s website [<http://mediarada.org.ua/>]

Media Council's decisions are increasingly relied on by the national media regulator which is a positive cooperation/co-regulatory practice with the potential of expanding into online field.

## 5. Negative measures to counter disinformation

*Please share information on measures to address disinformation that you believe have aggravated or led to human rights violations, in particular the right to freedom of opinion and expression.*

On January 20, 2020, the Ministry of Culture, Youth and Sports of Ukraine submitted for discussion a bill on ensuring national information security and the right to access reliable information (also known as a bill on disinformation)<sup>49</sup>. Ukrainian civil society organizations<sup>50</sup>, Reporters Without Borders<sup>51</sup> and OSCE Media Freedom Representative<sup>52</sup> opposed the bill, as the proposed legislation could prove detrimental to freedom of expression.

In the end, the Ministry abandoned the bill. Despite the fact that the bill aimed to respond to Russian disinformation, it contained risks of imposing excessive state influence over journalists and media. Ukraine must counter disinformation, especially in the context of the current armed conflict with the Russian Federation, but it should not restrict Ukrainian media freedom.

## 6. Recommendations to protect and promote freedom of expression

*Please share any suggestions or recommendations you may have for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.*

Considering the experience of Ukraine in countering disinformation, we can recommend the following measures to protect and promote freedom of expression:

- States can establish some restrictions over freedom of expression, in particular, prohibit incitement to war, armed conflict, terrorism; statements inciting national, racial or religious hatred; and intentional, massive and systemic disinformation (e.g. information that has both the dimension of falsity and the dimension of harm) which can trigger aggravated consequences.
- Any restrictions of freedom of expression should be carried out on the basis of law, in order to pursue a legitimate goal (national security, ensuring democratic elections, upholding the rights of others, public order) and be necessary in a democratic society.
- The control over compliance with restrictions may be exercised through a co-regulatory mechanism – cooperation of the state, represented by the national regulator in the media field, and media sector, represented by an independent self-regulatory body. Introduction of a self-regulatory body, consisting of highly qualified media experts can support professional standards of journalism, promote media literacy and review disputable situations regarding compliance with media laws, international media standards, and violations of journalistic ethics.

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<sup>49</sup> Presentation of the bill on counteracting disinformation [<https://mkip.gov.ua/files/InformPolityka.pdf>]

<sup>50</sup> Legal analysis of the bill on disinformation [<https://dslua.org/publications/yurydychnyy-analiz-zakonoproektu-pro-dezinformatsiiu/>]

<sup>51</sup> Ukraine: RSF warns against ineffective and counterproductive draft bill on disinformation [<https://rsf.org/en/news/ukraine-rsf-warns-against-ineffective-and-counterproductive-draft-bill-disinformation>]

<sup>52</sup> OSCE Media Freedom Representative concerned by several provisions of Ukraine's new draft law on disinformation [<https://www.osce.org/representative-on-freedom-of-media/444673>]

- Besides state control, a judicial overview is necessary. The courts must determine the line between admissible statements and unlawful statements, between what is legal and illegal. Remedies should always be available to users in case of restriction of freedom of expression.
- States should establish sensible rules for information-sharing platforms (such as Facebook, YouTube, Twitter, TikTok), in particular, their obligation to ensure an effective mechanism for communicating and responding to complaints. The control over compliance with such rules may be exercised by the national regulator in the media field or by an independent co-regulatory body. States may conclude with the information-sharing platforms memorandums on co-regulatory mechanisms, cooperation in the field of counteracting the spread of disinformation, ensuring the transparency of campaign financing and compliance with other national legislation requirements.
- To counter disinformation in social media, cooperation between Facebook, fact-checking organizations and local civil society organizations are necessary. For example, providing public consultations to the Facebook Oversight Board could be a good tool for understanding the specifics of local contexts, ensuring diversity of experiences and opinions, based on which Facebook content moderation decisions should be made. The Board can urge Facebook to review certain policies of online content moderation and bring these policies in line with established standards in the sphere of human rights and fundamental freedoms.
- Development of fact-checking initiatives and media literacy initiatives to debunk false information are also important components in countering disinformation and ensuring access to reliable information. In addition, states should educate and empower users to better access and use online information.