Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media

LEGAL ANALYSIS

PRE-DRAFT
LAW ON ELECTRONIC COMMUNICATIONS OF BOSNIA AND HERZEGOVINA

Commissioned by the Office of the OSCE Representative on Freedom of the Media from Miloš Stojković media expert

[AUTOMATED TRANSLATION]

August 2026

Contents

I. Context

In June 2026, the Ministry of Communications and Transport of Bosnia and Herzegovina published[1] the Pre-Draft Law on Electronic Communications (hereinafter: the "Pre-Draft ECL"). According to the proponent, the purpose of this legislation is to align the electronic communications sector with the European Union regulatory framework. Among other matters, the Pre-Draft ECL regulates the competences of the national regulatory authority—the Communications Regulatory Agency of Bosnia and Herzegovina (CRA)—the conditions applicable to electronic communications networks and services, market regulation, security, privacy, end-user rights, radio spectrum management, and other related matters. One of the key issues is the institutional position of the CRA, which remains a converged regulator responsible for both electronic communications and electronic media.

The Organization for Security and Co-operation in Europe (OSCE), through the Office of the OSCE Representative on Freedom of the Media, requested a legal analysis of the Pre-Draft ECL. The analysis also encompasses an assessment of its compliance with international standards and OSCE commitments concerning freedom of expression and freedom of the media, as well as recommendations for its improvement where necessary.

II. Executive Summary

The Pre-Draft ECL represents a significant step forward compared with the Communications Law currently in force, which is based on a considerably older European regulatory framework. The Pre-Draft transposes the key mechanisms of the European Electronic Communications Code, the Gigabit Infrastructure Act and the Open Internet Regulation. Although it does not regulate media content, it is indirectly relevant to freedom of the media and freedom of expression because it regulates the status of the CRA as a converged regulator, the infrastructure through which media content is transmitted, the retention of communications data and open internet access (net neutrality).

Regarding the status of the CRA, the Pre-Draft significantly strengthens the formal guarantees of its legal, organizational, functional and financial independence. Particularly positive features include removing the Council of Ministers from the procedure for appointing the Director, granting the CRA its own legal personality, prohibiting it from seeking or receiving instructions, empowering it to determine its internal organization independently, financing it through regulatory fees, providing it with its own transaction account, and subjecting it to independent auditing. Nevertheless, certain provisions that regulate the procedure for selecting members of the Regulatory Council may still create ground for undue influence by the executive and legislative branches, while the assessment criteria, transparency of the procedure and consequences of appointments not being made in a timely manner are not clearly regulated. The broadly formulated grounds for the individual or collective dismissal of Regulatory Council members, the absence of an explicit legal remedy for dismissed Council members, and the possibility of dismissing the Director for failing to act in accordance with the guidelines of the Parliamentary Assembly constitute the principal risks to the regulator's independence.

The CRA's financial position has been strengthened, but the power of the Council of Ministers to amend the CRA's financial plan may constitute an indirect mechanism of undue influence. This power should therefore be limited to a transparent review of legality and compliance with predetermined budgetary criteria. Financing the CRA exclusively through fees paid by regulated entities is not by itself a weakness,

[1] **Ministar Forto: BiH treba moderan zakon o elektronskim komunikacijama**, published on June 10, 2026, available at the web page of the Ministry, via the following link: https://bit.ly/3RoPTc0.

but the criteria for determining such fees must ensure objectivity, proportionality and stability, as well as sufficient resources for the regulator to perform its functions.

The Pre-Draft ECL imposes a general obligation to retain the communications data of all users for a period of 24 months. This approach follows the model established by Directive 2006/24/EC, which the Court of Justice of the European Union declared invalid because of its disproportionate interference with the rights to privacy and data protection. Preference should be given to targeted retention and the expedited preservation of data in specific cases, special protection for privileged communication, especially in relation to journalistic sources, independent oversight, transparency and effective judicial protection.

The introduction of open internet rules represents an important improvement, contributes to protecting access to information and freedom of expression, and reduces the risk of operators influencing access to media and other content. However, the exception of allowing traffic to be restricted, filtered or blocked, and similar measures to be applied, based on decisions issued by an undefined range of public authorities, is insufficiently precise. The competent authorities, legal grounds, conditions, duration of measures and available legal remedies should be clearly defined. The CRA's supervisory and enforcement powers should also be expressly prescribed, following the model of Article 5 of Regulation (EU) 2015/2120[2].

III. Overview of the Pre-Draft ECL and Scope of the Analysis

The Communications Law[3] currently in force, which has so far regulated the electronic communications sector, is predominantly based on the 1998 EU regulatory framework for telecommunications. By contrast, the Pre-Draft ECL largely transposes more recent EU legislation in this field, in particular[4]:

- **The European Electronic Communications Code**[5], which constitutes the EU's general regulatory framework for electronic communications networks and services. It covers, among other matters, the conditions for providing telecommunications services, access to electronic communications infrastructure and networks, radio spectrum and numbering management, sector-specific competition rules in the field of telecommunications (ex-ante regulation), universal service, network security and the protection of end-user rights;

[2] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, available at: https://eur-lex.europa.eu/eli/reg/2015/2120/oj/eng.

[3] "Official Gazette of Bosnia and Herzegovina", No 31/03, 75/06, 32/10 and 98/12.

[4] Article 1(3) of the Pre-Draft ECL provides an exhaustive list of the EU legal acts with which the Pre-Draft is aligned: "(3) This Law aligns national legislation with the provisions of the following acts of the European Union: Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (recast) (OJ L 321, 17.12.2018); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002); Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019); Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002); Regulation (EU) 2024/1309 of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU (OJ L, 2024/1309, 8.5.2024); and Decision No 676/2002/EC of the European Parliament and of the Council of 7 April 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002)."

[5] **Directive (EU) 2018/1972** of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, available at: https://eur-lex.europa.eu/eli/dir/2018/1972/oj/eng.

- **The Gigabit Infrastructure Act**[6], which specifically regulates measures aimed at reducing the cost of and accelerating the deployment of high-speed electronic communications networks, particularly through access to existing physical infrastructure, the coordination of civil works, the simplification of permit-granting procedures and the installation of infrastructure in buildings suitable for providing high-speed internet access;
- **The Open Internet Regulation**[7], which regulates open internet access and net neutrality, primarily by establishing the general principle of equal and non-discriminatory treatment of internet traffic, access to online content and the protection of the related rights of end-users[8].

The key regulatory mechanisms governed by the provisions of the Pre-Draft ECL include:

- **The status of the regulator (CRA)** – defining the tasks, competences, institutional status and governing bodies of the national regulatory authority;
- **General authorization** – essentially allowing electronic communications networks and services to be provided without first obtaining an individual license, subject to notification to the CRA and compliance with statutory conditions. This simplifies market entry, while individual licenses remain applicable to radio spectrum and numbering resources, given their limited availability;
- **Management of radio spectrum and numbering resources** – aimed at ensuring their rational, efficient, transparent and non-discriminatory use;
- **Universal service** – a set of telecommunications services that should be available to all users, including users in remote areas, socially disadvantaged persons and persons with disabilities, at affordable prices and irrespective of whether providing those services is commercially viable. These services include voice communications and internet access at an adequate speed, enabling the use of essential digital services;
- **Access to physical infrastructure and the coordination of civil works** – enabling operators to use existing infrastructure and coordinate works to reduce costs and accelerate the deployment of very high-capacity networks, while avoiding unnecessary duplication of infrastructure and adverse effects on the environment and complying with urban-planning requirements;
- **Ex ante market regulation** – enabling the CRA to intervene prospectively in markets characterized by persistent barriers to competition. Following the definition and analysis of a relevant telecommunications market, the CRA may designate an operator as having significant market power and impose regulatory obligations upon it, including transparency, non-discrimination, accounting separation, access to infrastructure and price control obligations. These provisions are intended to remedy market failures and gradually create the conditions for effective competition;
- **Infrastructure sharing and co-location** – enabling the CRA, where no commercial agreement has been reached, to require the sharing of infrastructure, premises or equipment. This mechanism is intended to prevent the economically unjustified duplication of networks, facilitate market entry by competitors and increase the choice of services available to end-users;

---

[6] **Regulation (EU) 2024/1309** of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU (Gigabit Infrastructure Act), available at: https://eur-lex.europa.eu/eli/reg/2024/1309/oj/eng.

[7] **Regulation (EU) 2015/2120** of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance), available at: https://eur-lex.europa.eu/eli/reg/2015/2120/oj/eng.

[8] The Regulation is not explicitly listed in Article 1(3) of the Pre-Draft ECL. However, Article 154 of the Pre-Draft regulates open internet access and essentially implements the requirements of the Regulation, which is why it is referred to here.

- **Rights of way and easements** – enabling operators to access public or private property for the purpose of installing, using and maintaining electronic communications infrastructure. The purpose of these rules is to remove property-law obstacles to network deployment while protecting property owners' rights, ensuring appropriate compensation and applying transparent and non-discriminatory procedures;
- **Protection of users of electronic communications services** – comprising a set of sector-specific rules that supplement general consumer-protection legislation;
- **Confidentiality of electronic communications and access to retained data** – regulating the conditions for intercepting the content of communications and accessing communications data that do not reveal their content, as well as the obligations of operators in that context.

This summary demonstrates that Pre-Draft ECL, following the approach adopted in EU legislation, regulates the electronic communications sector and the provision of electronic communications services. In simplified terms, these services may be defined as services that enable the transmission of data over various types of electronic communications networks, including fibre-optic networks, HFC networks—broadly speaking, cable networks—mobile networks and other networks, *"excluding services providing content or exercising editorial control over content transmitted using electronic communications networks and services"*[9]. Consequently, content transmitted over electronic communications networks does not fall within the scope of this Law. Instead, it is governed by various other laws and regulations, depending on the nature of the service concerned, including media legislation.

Pre-Draft ECL is therefore of indirect relevance to the media sector and, more broadly, to freedom of expression. Media freedom primarily depends on legislation governing media services, rather than legislation regulating infrastructure. Nevertheless, the impact of the Pre-Draft ECL should not be overlooked, particularly because it regulates: 1) rules relevant to telecommunications infrastructure and electronic communications services through which media content is transmitted and made accessible to users; 2) access to communications data and the communications themselves; and 3) the institutional status of the CRA as a converged regulator responsible for both electronic communications and electronic media.

Accordingly, the following parts of the Pre-Draft ECL are particularly relevant to this analysis: (i) Chapter II, governing the institutional status of the CRA, given its role as a converged regulator; (ii) Chapter XV, concerning data retention and the confidentiality of electronic communications, particularly from the perspective of protecting journalistic sources; and (iii) the provisions on open internet access contained in Article 154 of the Pre-Draft ECL, especially the exceptions to the fundamental principle of open internet access[10].

IV. The Status of the CRA as the National Regulatory Authority

The legal status of the CRA is a complex issue arising from its nature as a converged regulator responsible for both electronic communications (infrastructure) and electronic media (media content). Since countries in the process of accession to the European Union align their legislation with EU rules, it is essential to refer to the regulatory framework established within the European Union. Therefore, the provisions governing the work of the national regulatory authority should incorporate the mechanisms envisaged by the regulatory frameworks for both electronic communications and media.

[9] Pre-Draft ECL Article 4, Point r).

[10] This analysis is limited to the parts of the Pre-Draft Law identified above, and the OSCE Representative on Freedom of the Media reserves the right to provide further comments on the Pre-Draft Law and/or related matters.

(a) Standards Governing the Organization of the National Regulatory Authority

Articles 5-9 of the European Electronic Communications Code regulate the status of national regulatory authorities responsible for electronic communications. The essence of these provisions is to guarantee that the regulator has:

- clearly defined and stable competences,
- legal separation and functional independence from operators and, where the state owns or controls an operator, effective structural separation of the regulatory function from the state's ownership and management functions,
- a transparent and open procedure for selecting the regulator's governing bodies, a minimum term of office of at least three years, and requirements ensuring that the selected candidates possess appropriate professional qualifications, knowledge and experience,
- continuity in its decision-making,
- transparent procedures for dismissing members of its governing bodies, with dismissal permitted only where they no longer fulfil the conditions required for appointment,
- the ability to perform its tasks impartially, transparently and in a timely manner, together with safeguards preventing it from seeking or receiving instructions from another body. This does not preclude judicial review in accordance with national constitutional law, provided that the regulator's decisions may be suspended or overturned only by the competent appeal bodies,
- adequate professional, financial and human resources necessary to perform its tasks, including a separate annual budget and autonomy in implementing the allocated budget.

In addition to these safeguards, the European Electronic Communications Code contains provisions concerning cooperation among regulatory authorities within the EU, particularly through BEREC.

In the context of safeguards applicable to regulatory authorities responsible for media services, reference should be made to Articles 30-30b of the Audiovisual Media Services Directive ("AVMSD")[11], as well as to the European Media Freedom Act[12].

The AVMSD contains safeguards like those established by the European Electronic Communications Code. Article 30 provides that Member States must designate one or more national regulatory authorities or bodies that are legally distinct from the government and functionally independent of their respective governments and of any other public or private body. Member States may establish converged regulators responsible for several different sectors.

Such regulatory authorities or bodies must:

- exercise their powers impartially and transparently and without seeking or receiving instructions from any other body;

[11] **Directive 2010/13/EU** of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version).

[12] **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).

- pursue the objectives of the AVMSD, particularly media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition;
- have competences, powers and accountability mechanisms that are clearly defined by law;
- have adequate financial and human resources, enforcement powers and their own publicly available annual budgets;
- have heads or members of collegiate bodies who are appointed and dismissed through transparent and non-discriminatory procedures that guarantee the required degree of independence. Dismissal must be possible only when the head or member of the regulatory authority no longer fulfils the conditions laid down in advance for the performance of their duties. Any dismissal decision must be duly justified, communicated in advance and made available to the public;
- ensure that an effective remedy against the regulator's decisions is available before an independent appeal body, which may be a court. The regulator's decision must remain in force pending the outcome of the appeal, unless an interim measure is granted in accordance with national law.

Article 7 of the European Media Freedom Act (EMFA) provides that national regulatory authorities or bodies are responsible for applying the relevant chapter of the EMFA, in consultation and coordination with other competent authorities and, where appropriate, self-regulatory bodies. When carrying out the tasks assigned to them under the EMFA, regulators must comply with the independence requirements laid down in Article 30 of the AVMSD and possess adequate financial, human and technical resources. Member States must enable them to request that natural or legal persons subject to the EMFA, as well as other professional entities that may possess relevant data, provide proportionate and necessary information within a reasonable period.

In practical terms, the EMFA transforms the national regulator responsible for electronic media into a central body for the protection of media pluralism, including through coordination at the international level. Under the EMFA, an independent regulator performs multiple functions: it appoints a representative to the European Board for Media Services; maintains a national media ownership database; monitors compliance with obligations concerning the protection of editorial independence; monitors the conduct of very large online platforms in the context of content removal; oversees compliance with transparency obligations concerning public-sector advertising; monitors obligations relating to public service media providers; supervises transparency requirements applicable to audience measurement methodologies; cooperates with regulators from other Member States; conducts structured dialogue; and performs other related tasks.

Several documents concerning the status of independent regulators in the field of electronic media have been adopted within the framework of the Council of Europe. Recommendation Rec(2000)23[13] of the Committee of Ministers of the Council of Europe sets out the following standards concerning the organization of regulatory authorities:

- The rules governing the regulatory authority, its powers and responsibilities must be clearly and precisely prescribed by law to prevent political or economic interference in its work.
- Members of the regulatory authority must be appointed through a democratic and transparent procedure. The law should establish rules on incompatibility of office and the prevention of

[13] Rec(2000)23 – on the independence and functions of regulatory authorities for the broadcasting sector, available on the Council of Europe's website at the following link: https://bit.ly/4cuj5W1.

conflicts of interest, particularly in relation to political structures and entities subject to regulatory oversight.

- Members of the regulatory authority must not receive orders or instructions from other authorities or persons. They may be dismissed only on the grounds of a clearly established incapacity to perform their duties, a breach of the rules on incompatibility of office, or the commission of a serious criminal offence established by a final court judgment. Judicial protection against a dismissal decision must be available, and the dismissal of the regulatory authority's entire membership must not be used as a means of political pressure.
- The financing of the regulatory authority must be prescribed by law, based on a predetermined and transparent budgetary procedure, and sufficient to enable it to perform its functions independently and effectively. The regulatory authority should have autonomy in the use of the funds allocated to it.
- The regulatory authority should have appropriate powers to adopt implementing regulations, issue licences, monitor compliance with the law and licence conditions, and impose sanctions. These powers must be clearly prescribed and exercised transparently, impartially and proportionately.
- The licensing procedure must be open and transparent and based on predetermined, objective, proportionate and non-discriminatory criteria. Decisions granting or refusing a licence must be reasoned, publicly available and subject to judicial review.
- Supervision of programme content must not amount to prior control or censorship. Sanctions may be imposed only on the basis of law and in accordance with the principle of proportionality, and broadcasters must be given an opportunity to be heard. Decisions imposing sanctions must be reasoned and subject to judicial review.
- The regulatory authority is accountable to the public for its activities. It should publish regular or ad hoc reports, as well as reasoned decisions, subject to legitimate confidentiality requirements. Review of its decisions should be judicial and focused on legality rather than constituting a political review of expediency.

The European Audiovisual Observatory, which operates within the framework of the Council of Europe, has published comparative and country-specific analyses of the status of regulatory authorities responsible for electronic media in EU Member States and EU accession countries since 2011. These analyses assess the degree of regulatory independence. In September 2019, the Observatory published a comparative report that included the national regulatory authority of Bosnia and Herzegovina and applied the so-called INDIREG[14] methodology[15]. The latest comparative study was published in 2025[16]. Although it does not refer to Bosnia and Herzegovina it is also a useful tool in assessing the regulator's independence.

The INDIREG methodology separately assesses the formal and de facto dimensions of regulatory independence, based on the criteria established in Article 30 of the AVMSD. It uses indicators grouped into five dimensions of regulatory independence: (1) status and powers; (2) financial autonomy; (3) autonomy of decision-makers; (4) knowledge and capacity; and (5) accountability and transparency.

[14] Indicators for Independence and Efficient Functioning of Audiovisual Media Services Regulatory Bodies.

[15] Cappello M. (ed.), The independence of media regulatory authorities in Europe, IRIS Special, European Audiovisual Observatory, Strasbourg, 2019, © European Audiovisual Observatory (Council of Europe), Strasbourg, September 2019, available via the following link: https://bit.ly/44Z9QJx.

[16] The independence of national regulatory authorities, European Audiovisual Observatory, Strasbourg, 2025, available via the following link: https://bit.ly/4wOgoqx.

The methodology does not measure independence as an absolute category, but rather the risk of external influence: the lower the risk, the more favorably the regulator's position is assessed. Since not all indicators are equally significant, they are assigned different weights based on their relative impact on the potential for external interference. The assessment is conducted using a standardized questionnaire with predefined answers, allowing the methodology to be used both for regulatory self-assessment and for independent external assessment. The results are calculated automatically and presented separately for formal and de facto independence. The results are visualized using a spider-web chart. The further a result is located from the center of the chart, the better the regulator is protected against external influence. The accountability and transparency dimension is interpreted differently because it represents not only a potential limitation on autonomy but also a necessary mechanism of democratic oversight and regulatory legitimacy[17].

The assessment of the formal dimension of independence effectively measures the legislative preconditions for regulatory independence. In this respect, the 2019 report found that the Communications Law currently in force largely satisfied the requirements for regulatory independence under Article 30 of the AVMSD. However, the report identified as its principal shortcomings the procedure for appointing members of the CRA Council, which may remain inconclusive and continue indefinitely, and the absence of a clear procedure for replacing a member whose term of office ends prematurely due to illness, a conflict of interest or a breach of duty[18]. Regarding financial independence, the report found that the CRA enjoyed relative autonomy in allocating its funds. Its budget was first adopted by the Council of the Agency and subsequently submitted by the Director General to the Council of Ministers for approval. Until its final adoption, the Agency operated under the budget adopted by its Council. However, although the CRA was self-financed, its budget formed part of the overall budget of the institutions of Bosnia and Herzegovina. Consequently, the Agency did not exercise direct control over its funds and, in the event of delays in adopting the state budget, depended on decisions concerning temporary financing. The CRA's budget for 2019 was not separately published on its website but was included within the state budget, while detailed annual financial reports were published regularly[19].

To achieve fuller compliance with Article 30 of the AVMSD, the report recommended:

- amending Article 39 of the Law to ensure that the procedure for appointing Council members is clear, coherent, transparent and efficient and protected against undue political influence by the government and parliament;
- reconsidering Article 37(g), which enables the Council of Ministers to assign additional tasks to the CRA;
- removing this possibility, given that it is sufficient for the Council of Ministers to determine general sectoral policy or precisely defining the conditions and procedure under which new tasks may be assigned to the CRA.

Finally, Joint Declaration from 2023 on Media Freedom and Democracy of the four mandate holders on freedom of expression[20] (including the OSCE Representative on Freedom of the Media), among other things, prescribe positive obligation of member states to: Ensure that all public bodies which exercise

[17] *Ibid*, page 29-31.
[18] *Ibid*, page 43.
[19] *Ibid*, str. 38 and 39.
[20] Joint Declaration from 2023 of UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, OSCE Representative on Freedom of Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa on Media Freedom and Democracy, available at: https://rfom.osce.org/sites/default/files/f/documents/3/2/542676.pdf.

powers in print, broadcast, other media and/or telecommunications regulation, including bodies that receive complaints from the public, are independent, transparent, and effectively functioning in law and in practice. They should be protected from undue interference, particularly in a political or commercial nature. The legal status of these bodies should be clearly defined and their institutional autonomy and independence guaranteed and protected by law. This should include a participatory and transparent appointment process for the governance and senior managerial structures of these bodies, the ability to employ their own qualified staff, and a clear mandate and power of regulation as well as public accountability and adequate funding.

Therefore, applicable international standards referred to above essentially link the quality of the regulator's institutional status to the existence of appropriate guarantees of:

- **organizational independence**, comprising legal separation from the state and regulated entities, autonomy in organizing its own work, and transparent procedures for appointing and dismissing members of the regulator's governing bodies under clearly defined conditions;
- **functional independence**, relating to the autonomous performance of regulatory functions: the regulator adopts rules and decisions impartially, without seeking or receiving instructions from the government, parliament, operators or other entities, particularly in individual cases;
- **financial independence**, entailing the regulator's financial autonomy;
- **effectiveness and sufficient institutional capacity in performing the tasks** prescribed by law.

In addition, they require transparency and accountability in the regulator's work. These standards therefore constitute the starting points for assessing the quality of the proposed legislative provisions concerning the regulator's status under the Pre-Draft ECL.

(b) Analysis of the Provisions of the Pre-Draft ECL Concerning the Regulator

Compared with the Communications Law currently in force, the Pre-Draft ECL introduces significant improvements to the regulator's institutional status and the formal guarantees of its independence. The provisions of the Pre-Draft ECL concerning the CRA are therefore largely aligned with the standards established by the relevant EU legislation. Nevertheless, the provisions governing the appointment and dismissal of members of the Regulatory Council, certain provisions concerning the Director, and the provisions governing the regulator's financing continue to pose certain risks to its independence.

Organizational Independence

Regarding the requirements relating to organizational independence, the Pre-Draft ECL introduces the following improvements:

- removing the possibility for the Council of Ministers[21] to assign additional tasks to the CRA (Article 8 of the Pre-Draft ECL)[22],

[21] In earlier legislation, this body was referred to as the "Vijeće ministara" in the local language.

[22] It should be noted that, under the final provisions of Pre-Draft (Article 188(1) of the Pre-Draft ECL), this possibility remains applicable to electronic media. Article 37 of the Communications Law, which sets out the Agency's tasks, remains in force insofar as it concerns electronic media, pending the adoption of sector-specific legislation.

- establishing the principle of the regulator's legal separation and separate legal personality (Article 9 of the Pre-Draft ECL),
- entrusting the Regulatory Council with the procedure for appointing and dismissing the Director as the holder of executive authority, thereby treating this issue as a matter of the regulator's internal organization (Articles 18-20 of the Pre-Draft ECL),
- empowering the Regulatory Council to adopt the Statute as the regulator's principal organizational instrument and empowering the Director to adopt the Rulebook on the Internal Organization of the Agency (Article 21 of the Pre-Draft Law),
- applying the Labor Law in the Institutions of Bosnia and Herzegovina to the employment relationships of the Agency's staff (Article 22(1) of the Pre-Draft Law),
- empowering the Regulatory Council to adopt a Code of Ethics governing the rules of conduct and principles of professional ethics applicable to members of the Agency Council, the Director and the Agency's staff, including conflicts of interest and their obligations and responsibilities in performing public functions or employment duties (Article 22(2)),
- establishing obligations concerning the annual work plan, which is adopted by the Regulatory Council, and the annual activity report (Article 24 of the Pre-Draft ECL).

It should be noted that the Pre-Draft ECL changes the status of the Agency's staff by providing that their employment relationships are governed by the Labor Law in the Institutions of Bosnia and Herzegovina. This represents a change comparing to the Communications Law currently in force, which provides for the application of the Law on Civil Service in the Institutions of Bosnia and Herzegovina. Specifically, CRA employees would no longer have the status of civil servants. In formal terms, this may increase the Agency's staffing flexibility. However, the ultimate effect of this change will depend on whether the Agency independently adopts its staffing plan, conducts recruitment procedures, determines working conditions and has sufficient financial resources, while preserving professional expertise, political neutrality, and protection of employees against arbitrary treatment. At the same time, adequate safeguards must be maintained to ensure professional expertise, political neutrality, prevention of conflicts of interest, anti-corruption standards and transparency of the employment process.

A qualitative improvement is the removal of the Council of Ministers from the procedure for appointing and dismissing the Director, in which it plays a significant role under the current Communications Law.

On the other hand, certain provisions continue to present a risk of potentially undue interference with the regulator's organizational independence, particularly in relation to the procedures for selecting the Regulatory Council and the Director.

Significant improvements over the Communications Law concerning the appointment of the collegiate body include:

- more detailed professional eligibility requirements for candidates for membership of the Agency Council, together with more precise rules concerning incompatible functions and conflicts of interest (Article 15 of the Pre-Draft ECL),
- more detailed statutory regulation of the composition, competences and basic operating rules of the commission responsible for conducting the competitive selection procedure, including reviewing applications, interviewing and assessing candidates and establishing the list of candidates for membership of the Regulatory Council (Articles 13 and 14 of the Pre-Draft ECL),

- a significant reduction in the direct role of the Council of Ministers in the final selection of candidates: under Article 39 of the current Law, an ad hoc commission draws up a list of the 14 most successful candidates, from which the Council of Ministers selects seven candidates and proposes them to the Parliamentary Assembly. Under Article 14 of the Pre-Draft ECL, the commission submits the list of candidates directly to the Parliamentary Assembly, without the intermediate stage in which the Council of Ministers selects the candidates,
- establishing a 30-day period within which the Parliamentary Assembly should appoint the Council members after receiving the list of candidates,
- more precisely, regulating the representation of relevant professional expertise within the Council by requiring a certain number of members to possess experience in electronic communications, electronic media, law and economics, in addition to the applicable educational requirements.

The Pre-Draft ECL therefore regulates the ad hoc commission in greater statutory detail, while significantly reducing the direct influence of the Council of Ministers compared with the current system established by the Communications Law. Nevertheless, the risk of political influence over the appointment and dismissal of members of the regulator's collegiate body has not been eliminated, for the following reasons:

- **The eligibility requirements for membership of the Regulatory Council are not comprehensively and autonomously regulated by the Pre-Draft.** Article 15(1) of the Pre-Draft ECL refers to Article 7(1) of the Ministerial Appointments Law. Given the Council's status as a governing body of an independent regulator, all general and specific eligibility requirements for membership should be directly and exhaustively prescribed by the sector-specific legislation,
- **The method of appointing the ad hoc commission that conducts the public competition and establishes the list of candidates has been changed.** Under Article 39(4) of the Communications Law, the Parliamentary Assembly of Bosnia and Herzegovina appoints the commission upon a proposal from the Council of Ministers. Under Article 13(1) of the Pre-Draft ECL, the competent ministry appoints the commission. The commission would therefore be appointed by the executive rather than the legislative branch,
- **The composition of the ad hoc commission that conducts the public competition and establishes the list of candidates.** Under the current system prescribed by Article 39(4) of the Communications Law, the ad hoc commission responsible for conducting the appointment procedure consists of an equal number of representatives of the governmental and non-governmental sectors. Under Article 13(2) of the Pre-Draft ECL, government-sector representatives have a dominant influence within the commission. This influence is exercised through three members who directly represent the executive branch (the state and entity ministries) and through the Ministry of Communications' selection of the members representing the non-governmental sector,
- **Establishing the list of candidates.** Under both the current system and the system proposed by the Pre-Draft ECL, the commission has the dual role of an administrative and technical body that verifies the formal validity of applications submitted in response to the public competition and a body that selects among the candidates. Given the commission's composition, over whose appointment government representatives exercise a dominant influence, the risk of undue influence over the initial selection of candidates therefore remains,
- **The public call.** Although the ad hoc commission is formally entitled the *"Commission for Conducting the Competitive Procedure for the Appointment of Members of the Agency Council"*, the public call for candidates for the Regulatory Council is announced by the Ministry rather than the

Commission. Moreover, the required content and elements of the public competition are not prescribed by law,

- **The absence of prescribed candidate-assessment criteria and operating rules for the Commission.** Article 14(4) and (5) of the Pre-Draft ECL provides for candidate interviews and scoring. However, these provisions do not determine the applicable criteria, the scoring method or the minimum score required for inclusion on the list. The Commission adopts its own rules of procedure, through which it can effectively determine the key selection rules, only after the deadline for applications has expired—even though the Commission itself did not announce the competition. This leaves broad scope for subjective and arbitrary assessment and for adapting the criteria to candidates,

- **No legal consequences are prescribed if the Parliamentary Assembly fails to appoint Regulatory Council members within the prescribed period.** Article 14(11) of the Pre-Draft ECL provides that the Parliamentary Assembly must decide within 30 days. However, it does not prescribe the legal consequences of the Assembly's failure to decide within this period, rejection of the list or appointment of only some of the members. In practice, if new members are not appointed, the existing members whose terms have expired remain in office until their successors are appointed. This raises questions regarding the collegiate body's legitimacy and may significantly hinder the Council's decision-making process. This was one of the issues identified in the European Audiovisual Observatory's 2019 report,

- **No provision is made for staggered terms of office.** Staggered terms are a common legislative arrangement for collegiate regulatory bodies, intended to prevent a single parliamentary majority from determining the Council's composition over the longer term. They are generally introduced upon the initial appointment of a collegiate body. Article 11(3) of the Pre-Draft ECL provides for a four-year term of office, with the possibility of reappointment, but does not provide for staggered terms,

- **Certain grounds for dismissal are formulated too broadly.** Article 16(2) of the Pre-Draft ECL sets out the grounds for dismissing a Council member before the expiry of their term of office. Although the dismissal procedure is regulated in greater detail than under the current framework, certain grounds are formulated too broadly and may create a risk of undue legislative interference in the dismissal procedure. The legislative branch has no direct insight into the work of individual Council members, raising the question of how it can determine that a member has performed their duties unprofessionally. The Council itself, as the body best placed to assess how an individual member performs their duties, should therefore participate in dismissal proceedings based on the grounds related to the professional performance,

- **No legal remedy is available against the dismissal of a Council member.** The Pre-Draft ECL does not expressly provide a legal remedy for a dismissed Council member (Article 16 of the Pre-Draft ECL), although such a remedy is available in the event of the Director's dismissal (Article 20 of the Pre-Draft ECL). Among other requirements, the European Electronic Communications Code requires that a decision dismissing the head or a member of a collegiate body be reasoned, made publicly available and subject to judicial review on both points of fact and law,

- **Collective dismissal of the Council.** The possibility of dismissing the Agency Council as a whole due to its failure to hold meetings, adopting general acts, submitting the annual work plan or adopting the financial plan presents a particular risk (Article 16(4) of the Pre-Draft ECL). Collective dismissal constitutes a particularly serious interference with the regulator's continuity and independence. It should therefore be limited to exceptional and clearly defined circumstances and accompanied by warning, a period in which to remedy failure etc.

Regarding the provisions concerning the CRA Director, the following concerns arise in the context of the regulator's organizational independence:

- **The eligibility requirements for appointments as Director are not comprehensively and autonomously regulated by the Pre-Draft.** Article 17(1) of the Pre-Draft ECL refers to Article 7(1) of the Ministerial Appointments Law. The same concerns raised in relation to Article 15(1) of the Pre-Draft ECL therefore apply to this provision,
- **Subjecting the salary of the Agency's Director to the general regime governing salaries and allowances in the institutions of Bosnia and Herzegovina could limit its institutional capacity to engage the most qualified persons.** Although the arrangement under Article 17(4) of the Pre-Draft ECL is not in itself incompatible with European standards of regulatory independence, the Pre-Draft contains no specific safeguards ensuring that the Director's salary will be set at a level commensurate with the responsibilities and complexity of the tasks performed within the regulator. This creates a risk that the general salary policy applied to state institutions may affect the Agency's staffing capacity,
- **Certain grounds for dismissal are formulated too broadly.** Article 20(2) of the Pre-Draft ECL prescribes the grounds for dismissing the Director before the expiry of their term of office. Although the dismissal procedure is regulated in greater detail, certain grounds are formulated too broadly and may create a risk of undue interference.

Functional Independence

Regarding functional independence, Article 9(2) of the Pre-Draft ECL provides that, when performing its regulatory functions, the Agency must neither seek nor receive instructions. It also prohibits any form of influence over the Agency's work that could jeopardize its autonomy or functional and financial independence. This constitutes a broadly formulated safeguard consistent with the relevant standards described above. However, the Pre-Draft does not prescribe the legal consequences for activities conducted contrary to this prohibition.

On the other hand, Article 20(2)(f) includes among the grounds for dismissing the Director a failure to act in accordance with the "guidelines of the Parliamentary Assembly". The possibility of dismissal on this ground is contrary to the concept of the regulator's functional independence and is incompatible with the prohibition of receiving instructions under Article 9 of the Pre-Draft ECL.

Article 23 of the Pre-Draft provides for the corresponding application of certain provisions of the Law on Administration. Applying legislation governing the state administration may potentially create a means of influencing the Agency's functional independence. Nevertheless, such a provision is not in itself incompatible with the Agency's independence, if it does not permit hierarchical, professional or any other form of supervision by executive authorities over the Agency's regulatory work.

Financial Independence

Articles 25 and 26 of the Pre-Draft ECL relate to matters relevant to the regulator's financial operations. Under these provisions, the CRA is financed through regulatory fees, the amounts of which are determined by its Council. The Council of Ministers adopts the annual financial plan. If the Council of Ministers does not adopt or amend the proposed annual financial plan by the end of the year, the proposed plan adopted by the Agency Council applies. The Agency has its own transaction account, must ensure the transparency of its financial operations and is subject to an annual independent audit, the findings of which are made public. Any surplus revenue is carried over to the following year.

The potentially problematic aspect of these provisions concerns the Council of Ministers' role related to the amending of the proposed financial plan. This power may constitute a mechanism for influencing the regulator's financial independence.

Financing the Agency exclusively through regulatory fees generally contributes to its independence from the state budget. The potential risk does not arise from the source of revenue itself but from insufficiently precise criteria for determining the fees, possible fluctuations in revenue and the need to ensure that the fees are objective, transparent, proportionate and sufficient to enable the Agency to perform all its functions.

Conversely, the provisions concerning independent auditing and transparency are consistent with the applicable standards of regulatory accountability.

V. Retention of Communications Data

Chapter XV of the Pre-Draft ECL regulates the retention of communications data that does not reveal the content of communications. The provisions of the Pre-Draft ECL establish:

- an obligation for operators to retain communications data,
- an obligation for operators to provide certain state authorities with access to those data,
- the categories of data to be retained,
- a retention period of 24 months, and
- references to the legislation governing intelligence activities and criminal proceedings.

The former EU legal framework in this area was established by Directive 2006/24/EC on data retention[23], which was adopted in the context of intensified efforts to combat terrorism and serious crime, particularly following the terrorist attacks in Madrid in 2004 and London in 2005. The Directive required providers of electronic communications services to retain certain categories of data generated or processed in connection with communications, but not the content of those communications, for a period ranging from six to 24 months.

The Pre-Draft ECL largely adopts the regulatory approach of that Directive. However, it does not comprehensively regulate the conditions for access to retained data but instead refers to the legislation governing criminal proceedings and intelligence activities. Consequently, it is not possible to determine from the Pre-Draft ECL alone whether the overall system ensures that access to data is permitted only in duly justified cases, for the pursuit of a legitimate aim and in compliance with the principles of necessity and proportionality, in accordance with the European Convention on Human Rights and the relevant EU standards.

The retained data do not include the content of communications, but they may reveal the identity of the participants, the time, duration and frequency of communications, the device used, the user's IP address and location. When combined, these data may enable precise conclusions to be drawn about an individual's private life, social relationships, habits and movements. General and indiscriminate data retention therefore constitutes a particularly serious interference with the rights to privacy and personal data protection, as well as the confidentiality of communications.

---

[23] Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

A particular risk arises in relation to journalists, lawyers and other persons whose communications enjoy enhanced protection, since access to metadata may lead to the identification of confidential sources and contacts. This may jeopardize not only the privacy of the persons directly affected but also the protection of journalistic sources and the exercise of freedom of expression.

The Pre-Draft ECL establishes a general obligation for operators to retain the data of all users for a period of 24 months, irrespective of whether those users have any connection to a serious criminal offence, a serious threat to public security or another specific risk. This approach adopts the basic regulatory model of Directive 2006/24/EC, which the Court of Justice of the European Union declared invalid[24] in 2014 precisely because of its disproportionate interference with the rights to privacy and personal data protection. The Court's subsequent case law has confirmed that combating crime, including serious crime, cannot justify the preventive, general and indiscriminate retention of the traffic and location data of all users. Strict conditions governing access to retained data cannot, in themselves, remedy the disproportionate nature of the prior obligation to collect and retain those data on a general basis.

A final assessment of the applicable safeguards also requires an analysis of the legislation to which the Pre-Draft ECL refers, particularly regarding the purposes for which access may be granted, the range of authorized authorities, prior authorization by a court or another independent body, access logs, subsequent notification of affected persons, the protection of confidential professional communications, independent oversight and effective legal remedies.

Considering the above, consideration should be given to abandoning general and indiscriminate data retention and replacing it with targeted retention and the expedited preservation of data in specific cases, subject to judicial oversight. If some form of data-retention regime is nevertheless retained, its purpose, the categories of persons and data covered, and its duration should be precisely limited. It should also include prior judicial or other independent review of access requests, special safeguards for privileged communications, especially when it comes to the protection of the journalistic sources, an obligation to record access and publish aggregate statistical data, oversight by the data protection authority and other relevant safeguards.

VI. Open Internet Access

Article 154 of the Pre-Draft ECL establishes the principle of an open internet, under which end-users have the right to access and distribute information and content freely and to use applications, services and terminal equipment of their choice. Providers of internet access services must treat internet traffic transparently and without discrimination and must not block, slow down, alter, restrict, interfere with or degrade specific content, applications or services.

By way of exception, reasonable traffic-management measures are permitted, if they are transparent, non-discriminatory, proportionate, time-limited and based on objectively different technical requirements rather than the commercial interests of the service provider. Additional measures that may involve blocking, slowing down or restricting traffic are permitted only for as long as necessary to comply with legislation and decisions of competent courts or public authorities, protect the integrity and security of the network, services and terminal equipment, or mitigate temporary network congestion, provided that equivalent categories of traffic are treated equally. The CRA Council is to regulate the more detailed obligations of internet access service providers through its rulebook.

[24] JUDGMENT OF THE COURT (Grand Chamber) from 8 April 2014 in Joined Cases C-293/12 and C-594/12, available at EURLEX website via the following link: https://bit.ly/4h9Mzff.

In the European Union, open internet access is regulated by Regulation (EU) 2015/2120 of 25 November 2015[25] and the BEREC Guidelines on its implementation. The initial Guidelines were adopted in 2016[26] and most recently updated in 2022[27]. The EU regulatory framework is based on the equal and non-discriminatory treatment of internet traffic, subject to strictly limited exceptions. National regulatory authorities are required to directly monitor compliance with these rules, collect information, monitor traffic-management practices, quality of service and the commercial practices of internet access providers, intervene in the event of infringements, and periodically report to BEREC and the European Commission. Member States are required to establish effective, proportionate and dissuasive penalties.

From the perspective of freedom of expression, the principle of an open internet constitutes an important safeguard against the unjustified blocking of, or interference with, access to content by operators acting as intermediary service provider Article 154 of the Pre-Draft therefore represents a significant improvement to the existing regulatory framework. The same article prescribes also the measures that may lead to the prevention of access in certain situations. Measures restricting access to harmful online content may be justified in certain circumstances where this is necessary to protect an overriding legitimate interest. Such circumstances may include:

- protecting minors from content that may impair their physical, mental or moral development;
- restricting content that incites violence or hatred against a group of persons or a member of such a group; and
- preventing the dissemination of content that constitutes a criminal offence, including offences related to child sexual abuse material or terrorism.

However, such measures should be precisely regulated by the relevant applicable legislation and narrowly interpreted.

The exception under Article 154(4)(a) of the Pre-Draft ECL is particularly significant. It permits traffic restrictions where necessary to comply with legislation, including decisions of courts or public authorities vested with the relevant powers. This provision adopts the basic approach of Article 3(3) of Regulation (EU) 2015/2120 but omits an important element of the EU wording: "National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."[28].. Consequently, the ability to restrict internet traffic in Member States is also subject to fundamental-rights standards, particularly those concerning freedom of expression, privacy, legality, necessity and proportionality.

The Pre-Draft does not specify which bodies qualify as "public authorities vested with the relevant powers", the legislation under which they may order restrictions on access, the criteria for determining the scope and duration of such measures, or the legal remedies available to service providers, content providers and affected users. In this regard, a final assessment of the applicable safeguards would also require a comprehensive analysis of the legislation regulating the prevention of access to the harmful content (e.g. media legislation, or the legislation regulating the criminal offenses), particularly regarding the range of

[25] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 lay down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

[26] BEREC guidelines on the Implementation of the Open Internet Regulation by National Regulators of European Net Neutrality Rules, August 2016.

[27] BEREC guidelines on the Implementation of the Open Internet Regulation, June 2022.

[28] Regulation (EU) 2015/2120, Article 8.

authorized bodies, oversight by a court or another independent body, effective legal remedies against unjustified intervention etc.

The exceptions must be interpreted restrictively and applied only to the extent and for the duration strictly necessary to pursue a legitimate aim established by law, completely in line with the applicable human rights standards (tripartite test of legality, legitimacy, necessity and proportionality). This would reduce the risk of abuse and prevent broad recourse to measures restricting the openness of the internet.

VII. Recommendations

(a) Institutional Status of the CRA

A positive development could be seen at the provisions guaranteeing the CRA's legal separation, functional independence, separate legal personality and regulatory competences should be retained. At the same time, to reduce the risk of political and other external influence, the following measures are recommended:

- all general and specific eligibility requirements for the appointment of Council members and the Director should be directly and exhaustively prescribed by the ECL itself, with a clear indication of any provisions of the public appointments regime that apply correspondingly,
- the method of appointing the commission responsible for selecting Regulatory Council members should be reconsidered to prevent the competent ministry from exercising dominant institutional influence over its composition and work, while ensuring balanced representation of the public sector, academia, the professional community and civil society,
- the principal rules governing the competition and candidate assessment should be determined before the competition is announced, and their amendment after the application deadline should be prohibited,
- candidates' curricula vitae, assessment criteria, aggregate and individual scoring results, and the commission's reasoning should be published, subject to personal data protection requirements,
- the legal consequences of the Parliamentary Assembly's failure to act within 30 days within the meaning of Article 14(11) of the Pre-draft of ECL should be clearly outlined,
- an effective legal remedy against decisions adopted during the competitive selection procedure should be available before an independent body or court, with clearly defined time limits, scope of review and legal effects,
- the introduction of staggered terms of office upon the initial appointment of Council members should be considered,
- a dismissal procedure should be prescribed that includes prior notification, the right to respond, the presentation of evidence, a reasoned and publicly available decision, and judicial protection for the dismissed member,
- the collective dismissal of the Council should be limited to exceptional cases of serious and persistent institutional deadlock and should be subject to warning, a period in which to remedy the irregularities and effective judicial protection,
- the possibility of dismissing the Director for acting contrary to the "guidelines of the Parliamentary Assembly" should be removed, as this provision conflicts with the prohibition on receiving instructions and the CRA's functional independence,

- it should be expressly prescribed that the corresponding application of the Law on Administration should not result in hierarchical, professional or other supervision by the executive branch over the CRA's regulatory activities,
- it should be ensured that the change in the employment status of the Agency's staff increases the CRA's staffing flexibility while preserving merit-based recruitment, political neutrality, procedural transparency, protection against arbitrary termination of employment, prevention of conflicts of interest, and anti-corruption standards and transparency,
- the remuneration of the Director and the Agency's staff should correspond to the complexity of their regulatory duties and labor-market conditions, so that the general remuneration regime applicable to state institutions does not undermine the CRA's ability to attract and retain appropriately qualified experts.

(b) Financial Independence of the CRA

Financing through regulatory fees, the CRA's own transaction account, the carrying forward of surplus funds, independent auditing and the public disclosure of financial reports are positive arrangements that should be retained. In addition, the following measures are recommended:

- objective, transparent, non-discriminatory and proportionate criteria for determining regulatory fees should be precisely prescribed,
- revenue should be stable, predictable and sufficient to enable the CRA to perform all its statutory competences,
- the Council of Ministers' power to amend the Agency's financial plan should be limited to reviewing its legality and compliance with clearly established budgetary rules.
- if the power to amend the financial plan is retained, any amendment made by the Council of Ministers should be reasoned, publicly available and based on criteria prescribed in advance,
- the rule under which the financial plan adopted by the CRA Council applies if the Council of Ministers fails to act within the prescribed period should be retained.

(c) Retention of Communications Data

The provisions requiring the general retention of all users' data for 24 months should be thoroughly reconsidered considering the case law of the Court of Justice of the European Union. The following measures are recommended:

- the general and indiscriminate obligation to retain the traffic and location data of all users should be abandoned,
- general data retention should be replaced with targeted retention based on objective criteria and a mechanism for the expedited preservation of existing data in specific cases,
- a clear distinction should be made between the retention of traffic and location data, IP addresses and subscriber identity data, on the one hand, and expedited data preservation, on the other, since these categories are not necessarily subject to the same degree of restriction,
- the legitimate purposes of data retention and access should be precisely prescribed, with the most intrusive measures limited to combating serious crime, addressing serious threats to public security and, subject to specific conditions, protecting national security,

- any general data-retention measure adopted for national security purposes should be permitted only temporarily in the event of a genuine, serious and present or foreseeable threat and should be subject to periodic independent, including judicial review,
- retention periods should be determined according to the category of data and demonstrated necessity and limited to the shortest period necessary,
- in any event, consideration should be given to reducing the general retention period from 24 to six months,
- access to data should be subject to prior authorization by a court or another independent body, except in clearly defined urgent cases subject to prompt subsequent review,
- the authorities entitled to request access, the permitted purpose of a request, the required content of its reasoning, the categories of data that may be accessed and the relevant period should be precisely defined in the relevant applicable legislation,
- specific safeguards should be introduced for journalistic sources, professional legal privilege and other privileged professional communications,
- immutable access logs, regular independent audits and the publication of aggregated statistical data on the number of requests the authorities submit to them and their outcomes should be required,
- oversight by the data protection authority should be ensured, including powers to inspect operators and state authorities,
- affected persons should be subsequently notified once such notification can no longer jeopardize the investigation or the legitimate objective of the measure, and effective judicial protection and the right to compensation should be ensured,
- a comprehensive legal analysis is recommended of the criminal procedure and intelligence legislation to which the Pre-Draft refers, since the legality, legitimacy and proportionality of the overall system cannot be assessed solely based on the provisions of ECL.

(d) Open Internet Access

The introduction of the open internet principle represents a significant improvement. To ensure the full and effective implementation of Regulation (EU) 2015/2120, the following measures are recommended:

- the general rule requiring equal, transparent and non-discriminatory treatment of internet traffic should be retained,
- it should be expressly prescribed that all exceptions must be interpreted restrictively and applied only to the extent and for the duration strictly necessary and proportionate to a legitimate aim,
- the courts and public authorities empowered to order the blocking, slowing down, filtering or other restrictions of internet traffic, as well as the statutory powers on which such orders may be based, should be precisely identified in the relevant applicable legislation,
- every order for application of exceptional measures related to restriction of access should have a clear statutory basis, be individually reasoned, limited in scope and duration, and subject to effective judicial review,
- legal remedies should be available to internet access providers, content providers and affected users, including the possibility of obtaining interim relief,

- restrictions should be subject to the requirements of legality, legitimacy, necessity and proportionality and to the standards protecting freedom of expression, privacy and access to information under the Constitution of Bosnia and Herzegovina, the European Convention on Human Rights and relevant international standards,
- effective, proportionate and dissuasive penalties should be prescribed for infringement of the open internet rules,
- the CRA should be required to publish periodic reports on the implementation of the rules, identified infringements, quality of service and measures imposed,
- the Agency Council's implementing rulebook should be adopted following public consultation and aligned with the current BEREC Guidelines on the implementation of the Open Internet Regulation.