Draft No. 14394 embeds in the Civil Code core definitions of family/marriage/de facto union as exclusively opposite-sex and introduces boni mores as an evaluative filter. This framework renders same-sex couples legally invisible for key civil-law consequences (health care access, inheritance, property, representation, etc.). Under such a framework, any sectoral initiatives (e.g., registered partnerships or stronger anti-discrimination norms) risk becoming declarative or constantly colliding with the Code.

In addition, the Draft Code reproduces and amplifies a paternalistic approach of preserving the family “at any cost,” shifting focus from women’s autonomy and safety to control and reconciliation. The combination of vague moral categories (boni mores, “immorality,” “unworthy conduct”), expanded/semi automatic reconciliation mechanisms, narrow violence exceptions tied only to elements of criminal offences, and barriers to divorce during heightened vulnerability creates systemic risks of trapping women in unwanted or unsafe relationships, including in situations of domestic violence, economic dependency, and psychological control.

Finally, a number of provisions may weaken child protection standards by substituting the best interests of the child with formal or moral-evaluative criteria. In particular, allowing marriage from age 14 due to pregnancy/childbirth creates a legalization channel for child marriage and risks normalizing coercion and inequality by legally formalizing vulnerability rather than strengthening safeguards. Other problematic constructions include those that worsen a family’s legal position due to poverty or instability and those that promote reconciliation/mediation practices without clear exceptions for violence.

On 22 January 2026, the draft Civil Code of Ukraine (the Code of Private Law) (Reg. No. 14394) (hereinafter – the Draft Code) was made public. The Draft Code was submitted by Member of Parliament R. O. Stefanchuk and other Members of Parliament of Ukraine.

The Draft Code proposes a comprehensive renewal of the institutions of private law within nine Books of the new Code, prepared on the basis of the Concept for the Renewal of Civil Legislation of Ukraine, which set the strategic directions for modernization of Ukraine's civil legislation.

As follows from the Explanatory Note to the Draft Code, the need for its renewal is driven by European integration processes, as Ukraine has pursued a course of harmonizing its legislation with European Union law and implementing European standards across various sectors.

AS FURTHER STATED IN THE EXPLANATORY NOTE, THE PURPOSE OF THE DRAFT CODE IS TO:

- establish a modern regulatory framework for private-law relations that responds to the challenges of the 21st century (digitalization, development of new economic models, transformation of asset circulation, increasing complexity of contractual and non-contractual arrangements, and the cross-border nature of relations) and ensures an adequate level of legal certainty, fairness, effective protection of civil rights and legitimate interests;

- create a clear and predictable private-law regime for individuals and businesses which, on the one hand, expands the space for private autonomy and freedom of contract, and, on the other hand, contains appropriate safeguards against abuses, imbalances, and bad-faith conduct, ensuring a balance of interests among participants in private relations, protection of the weaker party in typical situations of asymmetry, and effective legal remedies for the restoration of violated rights.

While fully supporting the need to implement best European practices within Ukraine's system of private law and to abandon outdated paradigms, we nevertheless consider it necessary to submit the following comments and proposals regarding the proposed text of the Draft Code. In our view, a number of provisions contradict the European integration agenda, do not correspond to the Draft Code's preambular objectives, introduce new vague and indeterminate concepts, and revive outdated rules which significantly narrow existing rights of women, children, and members of the LGBT community.

We conducted an analysis of the Draft Code in the following parts: Book One (General Part), Book Two (Personal Rights), Book Six (Family Law), Book Seven (Succession Law), and Book Eight (Private International Law), with a view to identifying inconsistencies between the proposed rules and, inter alia, the Rule of Law Roadmap, the Istanbul Convention, and related standards.

BOOK ONE
GENERAL PART

Article 6. Boni mores (Good morals).

This article introduces a new concept — boni mores ("good morals") — which undermines the Draft Code's clarity, foreseeability, and accessibility. Law and morality are distinct regulators of social relations. Incorporating a moral category into legislation without clear legal criteria means that individual moral convictions may, in practice, substitute the rule of law. Use of such an indeterminate concept risks imposing a notion of "proper" behaviour through discretionary interpretation.

Article 8. Custom as a source of private law.

The proposed amendment to paragraph one would allow private relations to be governed not only by customs of business practice, but also by "national custom," the custom of a national minority, or of an indigenous people. However, these proposed concepts lack clear criteria regarding their existence, content, and limits of application. In this form, such customs may conflict with mandatory rules, the principle of equality, non-discrimination, and contemporary human rights standards, while the provision does not establish adequate safeguards.

Article 21. Protection of civil rights and lawful interests by a mediator.

The proposed wording contradicts the Law of Ukraine "On Mediation," which defines mediation as an out-of-court, voluntary, confidential, and structured procedure whereby parties, with the assistance of a mediator, seek to prevent or resolve a conflict (dispute) through negotiations, and where a mediator s a specially trained neutral, independent, and impartial individual. Thus, mediation is a method of alternative dispute resolution, not a mechanism of rights protection—particularly as mediators are not vested with public authority.

Article 31. Civil legal capacity of an individual.

The proposed changes to paragraph two are blanket in nature and add no legal value. Resolving the issue of determining live birth would create additional burdens in applying this provision and require analysis of the Instruction on criteria for the perinatal period, live birth, and stillbirth approved by Order

of the Ministry of Health of Ukraine No. 179 of 29 March 2006.

Article 37. Partial civil capacity of a young child.
The proposed wording of paragraph two would, in effect, allow a young child who has reached the age of six to independently conduct payment transactions using electronic payment instruments issued in the child's name. At this age, a child cannot fully understand the legal consequences, yet would gain the ability to carry out payment transactions without safeguards. This approach opens the door to fraud schemes, loss of funds, and possible economic exploitation of children. The provision requires substantial revision to introduce parental control over financial transactions and to define the liability of parents (adoptive parents) or guardians for obligations arising from such transactions.

Article 42. Limitation of civil capacity.
Adding the term "other disorder" to paragraph one as a ground for limiting civil capacity creates broad scope for limiting capacity not only due to mental condition but, in practice, due to any illness or disability. Any limitation of capacity must be based on assessment of relevant conditions, risk analysis, and appropriate support measures and restrictions. Otherwise, it becomes a tool for discriminatory restriction of civil legal personality, contrary to proportionality and non-discrimination.

Furthermore, the proposed wording of paragraph four conflates two distinct legal institutions: limitation of capacity and invalidity of a transaction concluded by a person who did not understand the meaning of their actions. Introducing retroactive determination of the date from which capacity is limited undermines legal certainty and the stability of civil turnover. Such retroactive limitation creates uncertainty and is disproportionate, since the same objectives may be achieved through the institution of invalidity of transactions without changing a person's status "retroactively."

Article 45. Declaration of an individual as incapacitated.
The concerns regarding the concept of an "other disorder" outlined above apply equally here (in the context of declaring a person incapacitated).

Article 73. Persons who may not be appointed as a guardian or trustee.
Using the term "mental disorders" without a defined scope may lead to excluding persons who experience strong stress responses, PTSD, insomnia, nightmares, or sleep disturbances—conditions that have become widespread in the context of the full-scale invasion.

Likewise, the use of "psychoactive substances" combined with "abuse," without a defined list, may capture lawful prescribed medicines and/or sedatives. This creates the risk of automatic disqualification of a prospective guardian without actual abuse or harm, merely due to treatment.

Treating the absence of permanent residence or permanent income as a ground for ineligibility contradicts Commission Recommendation (EU) 2024/1238, which states that poverty should never be the sole reason for placing children in alternative care. This criterion is problematic even in peacetime as it replaces an assessment of capacity to serve the child's best interests with formal markers of stability. In wartime, it becomes particularly harmful, as people may lose housing or employment, be in relocation processes, or live in temporary conditions—none of which necessarily means they cannot safely and adequately care for a child.

In addition, in the wartime context this model has a distinct gendered impact A significant share of children are abroad or internally displaced with mothers and other female relatives who are the de facto caregivers. A requirement to "permanently reside in Ukraine" may exclude a grandmother/aunt/adult sister abroad even if she is the person providing daily care, treatment, and education.

While supporting the prohibition on appointment as guardian/trustee where a person has been held administratively liable for domestic violence or gender-based violence, we note the need to expand the list to include persons held administratively liable for sexual harassment. It is also necessary to clarify the relevant timeframe, as under the Code of Ukraine on Administrative Offences a person is considered subject to an administrative sanction for one year from the date of completion of the sanction.

Article 271. Commencement and expiry of time limits.

The Draft Code introduces new time units ("half-year," "quarter," "half-month"), while Article 270 defines time limits in years, months, weeks, days, or hours, creating legal uncertainty. Paragraph three defines a "half-month" as 15 days, yet not every month has 30 days, creating a mismatch between the term and calendar reality. Likewise, "quarter" is not any three months; in established understanding it refers to fixed periods of the calendar year.

Article 275. Special limitation periods.

Under Article 274, the general limitation period is three years. Article 275 proposes reducing the limitation period to six months for claims to recover penalties (fines, default interest), including for late payment of child support. Such reduction—especially amid war, displacement, unstable income, and safety risks (including domestic violence)—directly reduces access to a mechanism intended to strengthen compliance. The principal debt may remain, but the sanction component becomes significantly weaker due to the short time window for filing.

The same article also reduces the limitation period to one year for disputes on maternity and paternity. In such cases, a woman may be physically, psychologically, or socially unable to bring a claim within that timeframe

(pregnancy, childbirth, dependency, violence, pressure), resulting in inequality in effective access to justice: the consequences for the woman (child-related responsibilities, custody, social status) extend far beyond the period during which she can protect her violated right.

Article 278. Commencement of the limitation period.

Paragraph one artificially shifts the start of the limitation period to the end of the year, creating inequality and unpredictability in violation of the principles of equality and legal certainty: depending on the date of the violation, one person may gain almost a year of additional time, while another only a few days.

BOOK TWO
PERSONAL RIGHTS

Article 294. Right of reply / refutation.

The authors' approach—requiring that disseminated information must not violate the presumption of innocence—effectively transplants a criminal-law standard into civil defamation disputes concerning honour, dignity, and business reputation, where it is not naturally applicable. Such disputes are not about state punishment but about balancing reputation and freedom of expression. This approach risks making investigative journalism, anti-corruption criticism, and disclosures of public interest mpossible, as criminal proceedings may last for years. It creates dangerous uncertainty and may transform the right of refutation into a tool of pressure and silencing.

In addition, imposing an obligation to reimburse costs on the person seeking refutation may incentivize intimidation lawsuits: for wealthy or powerful claimants, the risk of paying costs in the distant future is minimal and manageable, while for media and civil society actors the immediate burden of refutation creates a serious barrier to publication. As a result, a mechanism intended to deter unfounded claims may, in practice, facilitate their use as an instrument of pressure.

Article 304. Right to medical and/or rehabilitation assistance.

Paragraph ten narrows an existing right under the Law of Ukraine "Fundamentals of Health Care Legislation of Ukraine," which guarantees the right to choose a doctor. The Draft Code appears to recognize only the right to a doctor as a person providing medical assistance, but not the right to choose that doctor.

The list of persons permitted to access a patient (paragraph eleven) calls into question access to intensive care and visitation where a patient is in a same-sex marriage/partnership.

Article 317. Right to individuality.
Paragraph two again introduces the concept of boni mores, which, given the subject matter of the article, opens the way to moral censorship and discretionary decision-making in matters affecting the LGBT community.

Ukraine already has a special framework law on non-discrimination—the Law of Ukraine "On the Principles of Preventing and Combating Discrimination in Ukraine"—which defines discrimination, its forms, exceptions, and protected characteristics (the list is open-ended). By contrast, paragraph three of the Draft Code introduces a new definition of discrimination and expands the list of protected characteristics in a manner that may facilitate legalization of unlawful restrictions on one ground or another.

The same concern applies to the Draft Code's new definition of acts or omissions that are deemed non-discriminatory. For example, introducing "features of individuality" as a basis for differentiation is likely to enable arbitrary justification of unlawful limitations.

The proposed clause on "objective necessity" of certain personal qualities, skills, including appearance or physical condition, as specific professional requirements is, in substance, a broad set of exceptions that does not correspond to the permissible limitations under Article 4 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

Article 330. Right to medical confidentiality.
The Draft Code introduces a new concept of "medical confidentiality" without defining it, creating a risk of narrowing the scope of information protected from disclosure. For example, Articles 39-1 and 40 of the Law of Ukraine "Fundamentals of Health Care Legislation of Ukraine" prohibit disclosure of information about a person's health condition, the fact of seeking medical assistance, diagnosis, and information obtained during medical examination. The Draft Code also risks restrictive interpretation regarding protection of intimate life, as it guarantees only non-disclosure of personal and family life.

Article 334. Right to personal space (privacy).
In paragraph two, inclusion of "family and intimate relations" without safeguards may lead to excessive privatization of the family sphere and complicate state responses to violations of rights of children, women, and persons with disabilities within the family. The state has positive obligations to intervene in the "private sphere" to protect vulnerable persons, which the provision does not expressly reflect.

Paragraph four appears to absolutize consent as the sole basis for interference, allowing interference with privacy only with the consent of the individual, without an explicit carve-out for necessity to protect the rights and freedoms of others or for cases of domestic violence, violence against children, or forced isolation. This creates a risk of conflict with mechanisms for protection of victims of violence, as an abuser may invoke “privacy” to resist intervention by social services or law enforcement.

BOOK SIX FAMILY LAW

Article 1472. Family.

The article introduces boni mores as a condition for recognizing a family (paragraph two). This evaluative and indeterminate standard creates an additional filter: even forms of cohabitation not prohibited by law may be questioned as to whether they qualify as a family. This increases the risk of selective non-recognition of family forms and legal uncertainty for persons living in de facto unions.

Paragraph three narrows the definition of “family members,” explicitly naming spouses, parents/children, adoptive parents/adopted children, persons who have taken a child into their care, and blood relatives who cohabit. Partners co-habiting without marriage are not clearly covered, potentially complicating access to rights tied in legislation to “family member” status.

Combined with provisions defining marriage as a union of opposite-sex persons, this creates a heightened risk for same-sex couples: they can fall neither within “spouses,” nor within “persons living in a de facto family union,” nor within “family members.” As a result, Book Six leaves same-sex couples outside legal recognition of family.

Article 1473. Marriage.

Paragraph one retains the definition of marriage as a union of a woman and a man registered in accordance with law. This is not a neutral provision, but a normative exclusion of same-sex couples from marriage and the full bundle of rights linked to it. Taken together with other provisions of Book Six, t entrenches inequality and sustains a discriminatory approach to LGBT persons in family life.

Paragraph two provides that the law may establish legal consequences of a religious marriage rite. This is an open framework without safeguards and may: (1) confer privileged status on a religious rite versus civil registration;

(2) blur the principle of secularism and effectively grant religious organizations elements of public authority; and (3) undermine legal certainty as the specific consequences and timing are not defined. A religious rite should not, by itself, create marriage or spousal rights/obligations; legal consequences must arise only after state registration and verification of conditions.

Article 1474. De facto family union.

Paragraph one defines a de facto family union as cohabitation of two persons of opposite sex as one family without marriage. This directly excludes same-sex couples from the legal mechanism intended to regulate de facto relationships. The state recognizes that family life without marriage exists and warrants legal consequences, but only for opposite-sex couples—thereby cementing inequality in civil rights.

At the same time, the provision extends spousal guarantees to unregistered relationships (property regime, maintenance, and related rights/obligations), creating room for disputes and legal uncertainty and requiring substantial refinement.

Article 1478. Right to marry.

The new wording takes two steps backward. The discriminatory formula — “The right to marry belongs to persons of opposite sex who have reached marriageable age”—explicitly codifies that the right to marry is not universal. This legislative framework systematically excludes same-sex couples from any family status and related rights.

Paragraph two identifies pregnancy/birth of a child as a ground for marriage from the age of 14, effectively creating a simplified channel for legalizing child marriage. It reframes heightened vulnerability (dependency, pressure, risks of coercion) as a basis for marriage registration rather than strengthening protection and preventing violence. This approach is problematic under international standards: CEDAW provides that the betrothal and marriage of a child shall have no legal effect and calls for measures, including legislation, to set a minimum marriage age.

Article 1480. Voluntariness of marriage.

While preserving the principle of free consent, paragraph one again defines marriage as a union of a woman and a man, reproducing the exclusion of same-sex couples and contradicting a European-integration logic of expanding — not narrowing — family rights.

The new paragraph three is largely declarative: it describes coercion to maintain marital relations and to engage in sexual intercourse as a violation of rights and refers to consequences established by law. However, liability for such acts is already regulated under criminal law, and the provision does not establish specific family-law remedies.

Article 1488. Engagement.

The Draft Code reinstates engagement as a ceremonial/customary status and expands its legal consequences. Paragraph four introduces not only reimbursement of expenses but also compensation for moral damages for refusal to marry after engagement, creating a risk of pressure on freedom to marry. It increases vulnerability of persons leaving toxic or violent relationships and may deter them from safely ending the relationship.

In addition, the list of material circumstances includes gender transition, which amounts to normative stigmatization of trans persons and invites discriminatory practice. Together with the “woman and man only” framing for engagement, the provision continues systematic exclusion of LGBT persons from legal family forms.

Article 1495. Invalid marriage.

Paragraph four introduces a discriminatory ground for invalidity — gender transition by one spouse. This substitutes the concept of invalidity (which should apply only where conditions were violated at the time of marriage) with a mechanism of interference with private and family life and allows annulment regardless of the parties’ will.

The Draft Code also enables initiation by an undefined circle of third parties (“interested persons,” “other persons whose rights are infringed”), creating a tool for harassment and interference, including on moral or religious grounds.

(Further provisions analysed in your text can be translated in the same style; due to length, I can continue seamlessly from Article 1509 onward on request.)

BOOK SEVEN SUCCESSION LAW (Selected issues)

Article 1757. First-order heirs by law.

The provision defines first-order heirs only through marriage and blood relationship, ignoring de facto family unions and same-sex couples, even where there is long-term cohabitation, mutual maintenance, and care.

Article 1759. Third-order heirs by law.

Because Book Six defines a de facto family union only for opposite-sex couples, Article 1759 effectively excludes same-sex partners from inheritance as de facto partners, even after years of family life. Combined with the opposite-sex-only definition of marriage, this removes any clear legal route for same-sex partners to inherit by law.

Article 1761. Fifth-order heirs by law.

The provision makes fifth-order inheritance dependent on living “as one family” for at least five years, but expressly excludes de facto family unions. Given that the Draft Code defines de facto family union only for opposite-sex couples, same-sex partners are left to prove “family” under Article 1472 with an additional boni mores filter and a narrowed notion of family members—creating a risk of non-recognition and discriminatory outcomes.

BOOK EIGHT
PRIVATE INTERNATIONAL LAW
(Selected issues)

Article 1808. Public policy clause.

Moving from a stricter construction to “may not apply” increases the risk of selective application and unpredictability. In practice, the public policy clause may become a universal ground for refusing to apply foreign law in sensitive matters of family status and private life (including same-sex relationships/marriages and legal effects of gender transition), even where the conflict-of-laws rule refers to foreign law.

Article 1874. Validity of marriage concluded outside Ukraine.

The mechanism allows non-recognition in Ukraine of marriages of Ukrainian citizens that are valid in the state of celebration if they do not meet Ukrainian grounds on invalidity. In the context of Book Six, this leads systematically to non-recognition of same-sex marriages of Ukrainian citizens concluded abroad and creates asymmetry, as the same filter does not apply equally to marriages between foreign nationals.

Article 1875. Existence of cohabitation as one family without marriage.

Paragraph two provides that where one party is a Ukrainian citizen, such cohabitation is recognized only between a woman and a man, directly excluding same-sex couples from recognition and making Ukrainian citizenship a trigger for non-recognition.

Article 1878. Legal consequences of cohabitation as one family without marriage.

Automatic application of Ukrainian law where the law of the last common residence does not recognize such cohabitation risks discrimination in cross-border situations: foreign law may recognize partnerships or family forms differently, but upon application of Ukrainian law the relationship may lose legal effects because the Draft Code limits recognition to opposite-sex unions. As a result, same-sex couples may lose property, succession, and other derivative protections despite genuine family life and lawful status abroad.