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Analysis and comments on the draft audiovisual Code of the Republic of Moldova

by

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I. INTRODUCTION

This analysis was prepared for the Media Division of Directorate General II, Council of Europe, and is based on an English translation of the draft Audiovisual Code, received from the Division in April 2006.

Moldova's media and broadcasting legislation has been developing fast over the past few years. As noted by Article 19, Moldova was the first country of the CIS to embark on a process towards the establishment of PSB. At the same time, some of the past laws or draft laws have raised serious controversies and have been seen as requiring considerable improvement in terms of compatibility with European standards.

According to the "Informative Note" appended to the current draft, "This bill aims at establishing the democratic principles of functioning of the audiovisual of the Republic of Moldova, ensuring protection of the rights of program consumers… The present state of audiovisual requires urgent amendments and completions to the legislation that regulates the field. Audiovisual institutions have to be editorially independent and not to present tendentiously information in informative and other programs". The draft seeks to balance broadcasting freedom with "more responsibility" on the part of broadcasters, especially with regard to observing "the rights of the program consumer" who will now have „the possibility to address to the competent authorities to ensure the appropriate conditions for free formation of opinion".

The draft Code also seeks to balance protection of "local producers and informational, cultural, and linguistic patrimony" and "stimulation of the development of the audiovisual market" with the aspirations of the Republic of Moldova to become a member state of the EU. Hence, the introduction of a 10% European quota and a clear desire to incorporate European standards into the draft Code, as defined in Council of Europe and European Union instruments.

As emphasised in the "Informative Note", "Audiovisual communication is regulated by a number of principles stipulated in Chapter II. These principles are in line with the recommendations of European experts in the field and take into account the specific realities of the Republic of Moldova".

This Code is to be the only piece of broadcasting legislation in the Republic of Moldova. Under Article 68, Law on Audiovisual No. 603/XIII of October 03, 1995 and Law on National Audio-Visual Public Institution "Teleradio-Moldova", No. 1320/XIV of July 26, 2002, are to be abrogated once the Code comes into effect. Therefore, there is all the more reason to analyse this draft Code carefully as it will determine prospects for progress in, and the future development of, Moldovan broadcasting.

II. BACKGROUND

Council of Europe

In a democratic society, media legislation must be based on the presumption of freedom, including the rights and freedoms laid down in Article 19 of the International Covenant of Civil and Political Rights (ICCPR) and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Article 10 of ECHR proclaims freedom of expression, including the right to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

These rights and freedoms are to be enjoyed and exercised by everyone. Accordingly journalists and the media do not have special rights and privileges over and above those enjoyed by other individuals. If these freedoms are assumed, then it is clear that legislation need only describe rules and procedures for their exercise and lay down such restrictions and exceptions from them as are acceptable in a democratic society.

The European Court of Human Rights has consistently held that any restrictions on freedom of expression must be based on the exhaustive list of reasons for such restrictions in para. 2 of Article 10 of ECHR, and must also be prescribed by law, narrowly interpreted, must respond to a pressing social need, pursue a legitimate aim, must be pertinent and proportional to the aim pursued, and necessary in a democratic society.

The Declaration on the Freedom of Expression and Information, adopted by the Committee of Ministers of the Council of Europe on 29 April 1982, regards the freedom of expression and information as vital for the social, economic, cultural and political development of every human being and as an essential foundation of democracy, and calls on States to guard against infringements of the freedom of expression and information; it regards the existence of a wide variety of independent and autonomous media, reflecting a diversity of ideas and opinions, a cornerstone of a democratic media system.

Council of Europe standards relate to many aspects of the media system and operation. They will be referred to here as needed. This applies in particular to:

- The European Convention on Human Rights, especially Article 10;
- Recommendation No. R (96) 10 of the Council of Europe Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting:
- Recommendation Rec(2000) 23 of the Council of Europe Committee of Ministers on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector
- Recommendation Rec(2004)16 of the Council of Europe Committee of Ministers on the right of reply in the new media environment
- Recommendation No. R (2000) 7 of the Council of Europe Committee of Ministers on the right of journalists not to disclose their sources of information.
- Recommendation Rec(2003) 9 of the Committee of Ministers to Member States on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting
- Moldova is a State Party to the European Convention on Transfrontier Television. The Convention thus provides an important legal framework for assessing the present draft Code.

European Union

Article 6 of the Treaty on the European Union specifies that the Union respects Fundamental Rights as guaranteed by the European Convention on Human Rights, including freedom of expression and information.

The "standards" referred to above are defined *inter alia* in the Copenhagen criteria, including "stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities". This is ascertained by means of analysing political institutions and the relations among them, in order to assess how democracy actually works in practice, in terms of how various rights and freedoms, such as the freedom of expression, are exercised, through, for example, the role of political parties, non-governmental organisations and the media and especially respect for fundamental rights, including freedom of expression and association.

In June 1995 the European Council at Madrid highlighted the importance, not only of incorporating the *acquis* into national legislation, but also of ensuring its effective application through appropriate administrative structures.

Legal approximation in this field presupposes the existence of national regulatory systems in the field of broadcasting. Regulatory systems should have basic powers which allow for the effective application and enforcement of audio-visual legislation. In terms of the audio-visual acquis, the regulatory systems should be in a position to address basic notions such as applicable law, jurisdiction, measures for the promotion of European and independent works, regulation of advertising, tele-shopping and sponsorship, protection of minors and the right of reply.

Such powers include the need for:

- adequate monitoring powers: the ability to monitor the content output of broadcasters, including the possibility to oblige broadcasters to provide data on their broadcasting activities. Regulatory systems must be in a position to provide, to the Commission, detailed reports on the implementation of, and compliance with, the broadcasting legislation. The ability to exercise such powers presupposes that the regulatory systems have adequate technical facilities, technical know-how and human resources to carry out the monitoring functions.

- adequate sanctioning powers: the ability to impose a range of sanctions for breaches of the law and/or licence conditions, weighted according to the seriousness of the breach. Such powers should include the ability to issue warnings, impose fines and, ultimately, the power to prohibit broadcasting/revoke broadcasting licences (for serious breaches of the law, having regard to the trans-frontier nature of the audio-visual *acquis*). Regulatory systems should be accorded such powers in a way that allows for transparent application.

The European Union attaches (as, indeed, does the Council of Europe) high importance to the independence of the broadcasting regulatory authority. Article 23 b of the proposed new Audiovisual Media Services Directive states that "Member States shall guarantee the

independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently".

The legal basis for EU relations with Moldova is provided by the Partnership and Cooperation Agreement (PCA). With the joint adoption of the EU-Moldova Action Plan on 22 February 2005, the EU and Moldova have further reinforced their bilateral relationship, providing a new tool to help implement the PCA and bring Moldova closer to the EU. The TACIS Program is the framework for technical assistance to support agreed objectives.

The EU Moldova Action Plan is a political document laying out the strategic objectives of the cooperation between Moldova and the EU. It covers a timeframe of three years. Its implementation will help fulfill the provisions in the Partnership and Cooperation Agreement (PCA) and will encourage and support Moldova's objective of further integration into European economic and social structures. Implementation of the Action Plan will significantly advance the approximation of Moldovan legislation, norms and standards to those of the European Union.

The priorities identified in the Action Plan cover the strengthening of administrative and judicial capacity; ensuring respect for freedom of expression and freedom of the media; and cooperation on economic and regulatory issues with the aim of improving the business climate and enhancing the long-term sustainability of economic policy.

Moldova and the EU cooperate closely in implementing the Action Plan. The Moldovan Government has put it at the centre of Moldova's reform program.

Moldova is not fully bound by EU legislation. However, comments below point to cases of clear divergence between the provisions of the draft Code and EU legislation in order to show that further alignment will be required in the future.

Media situation in Moldova

According to a European Commission assessment of 2004[1], Moldova has active and independent media. However, said the European Commission at the time, recent legislation and drafts (the 2003 amendments to the Law on Access to Information and a recent draft law on the restructuring of the public broadcaster) had raised concerns notably on the independence of journalists. In March 2004, the OSCE and the Council of Europe jointly issued a recommendation on how the public broadcaster should be structured.

The European Commission document of 2004 went on to say that a number of recent developments had underlined these concerns: problems with registration for two local radios, a statement by the chairman of Teleradio Moldova (TRM) about the reported imposition by the Board of guarantors of the program "the hour of the government" and his subsequent dismissal, and high fines imposed on local newspapers and opposition leaders for slander. These developments have been highlighted as issues of concern by OSCE and CoE.

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[1] Commission Staff Working Paper. European Neighbourhood Policy Country Report. Moldova, COM(2004)373 final. Brussels, Commission Of The European Communities 12.5.2004.

These concerns are thrown into sharp relief by a 2005 report[2] developed by ANEM (Association of Independent Electronic Media) and IREX (International Research and Exchanges Board) on the basis of the Stability Pact for South Eastern Europe Media Task Force's summary reports which are prepared under the auspices of the Media Task Force by the Media Plan Institute in Sarajevo. It states that Moldovan "media are in service of the ruling majority in the country" and that there is strong state and political control over public broadcasters[3].

The mass media were not included in the process of privatisation characteristic for the whole commercial sector in the post-Communist period in Moldova. According to Overview of Media Legislation in South Eastern Europe - November 2003 to October 2005, not a single periodical or broadcast outlet that existed before 1990 has been privatised. Most of them disappeared, and those who survived are still State owned.

Defamation/libel has been decriminalised. Liability still exists in the Civil Code, which prescribes no ceiling on pecuniary compensations that could be awarded for moral damages.

The Law on Access to Public Information was adopted in 2000, but its implementation remains a serious problem in Moldova.

A report on PSB in Moldova, published in 2005 by Article 19[4] points out that in practice TRM remains only nominally independent from government control, and output continues to be heavily biased in favour of the existing regime. Overall, it fails to provide viewers and listeners with accurate and objective information and a plurality of views and opinions. The consolidation of a genuine PSB structure will depend on the ability and will of the authorities to fully implement the newly-adopted provisions, as well as on the success of civil society's campaigning efforts.

The new draft Audiovisual Code of the Republic of Moldova raises hope that concerns from the past are going to be addressed and rectified. Whether this is indeed the case will be one of the main criteria for assessing it in this analysis.

III. GENERAL ANALYSIS AND ASSESSMENT

The draft Code should be seen as signifying continued progress in terms of legal competence on the part of the drafters, a clear (if not always fully implemented) desire to approximate Moldovan broadcasting legislation to European standards, and awareness of the need for legal solutions to challenges facing broadcasting.

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[2] Overview of Media Legislation in South Eastern Europe - November 2003 to October 2005 – ANEM, IREX, http://www.anem.org.yu/download/LegalMonitoringReport.pdf.

[3] The consequences of this are shown by data released in December 2004 by the Independent Journalism Centre, showed devastating bias in TRM programming in favour of the ruling parties. On television, while the authorities and their representatives were referred to 32 times a day, the opposition was present twice a day. The situation in public radio is even more imbalanced: 109 times versus 0.7 times on average. Experts of the Independent Journalism Centre said that transformation did not change the imbalance in the broadcaster's programming and that, two years after the transformation to the public service broadcaster has started, the company still had not met the criteria necessary for the functioning of a public broadcaster.

[4] State To Public. Genuine Public Service Broadcasting in Belarus, Moldova and Ukraine? London: Article 19, December 2005

An important and most welcome feature of this draft is that it specifies procedures and criteria for licensing private broadcasters, which is a very significant development.
On the one hand, therefore, it should be recognised as evidence of a much-needed effort to advance and improve Moldovan broadcasting legislation.

However, the draft Code also has serious shortcomings. These include in particular:

1. The intention to extend the scope of broadcasting legislation to the Internet, and thus subordinate Internet content to regulation and oversight by the Coordinating Council of the Audiovisual (CCA);
2. The ability of the government, or the governmental alliance, to exert undue influence and control over the Coordinating Council of the Audiovisual (CCA) and through it over all broadcasters, the Internet and especially the public service broadcaster Teleradio-Moldova (TRM);
3. Lack of regulation of local public service broadcasting;
4. Incomplete and sometimes erroneous alignment with European standards;
5. Inadequate regulation of the issues of ownership and plurality;
6. Lack of a prospective approach with a view to the digital switchover.

These points are discussed in more detail below.

Scope of the Code

Care must be taken not to include the internet within the ambit of this Code. Both the European Commission and the Council of Europe are currently considering whether to introduce some basic regulatory standards for all linear audiovisual services, regardless of the means of delivery. This would include ‘television’ (but not ‘radio’) services delivered over the internet. It would not be appropriate for the Republic of Moldova unilaterally to seek to regulate such services in advance of any European agreement. However, the Code should be kept under review to ensure it is consistent with developing European regulation. In the meantime, it should be remembered that the general law (criminal, copyright, etc) applies to on-line material, as it does off-line.

Broadcasting and the Authorities

Those relations are clearly spelt out in Article 39(1) (“the Council is an autonomous public authority under parliamentary control”); Article 42.2 (“Candidates for the position of the member of the Council are proposed by the corresponding Parliamentary Commission, taking into account the number of mandates held by the legally established Parliamentary factions”) and Article 56.2 (“The activity of the Company is subordinated to the public through the Council”), as well as by the system of appointment and employment of the TRM President and Vice-President by the CCA, and its role as the top management body of TRM.

All this means that political control over broadcasting is openly written into the draft Code.

The Experts are proposing that in all these areas the draft Code should be completely rewritten.

Consideration should be given to involving Civil Society in the process of appointing CCA members. The qualities and characteristics of potential members can be extended to ensure that the right persons are appointed, and the appointments should be staggered to ensure that there are always some experienced members on the Council.

We recommend clarifying and amending the role and duties of the CCA, especially in relation to TRM, election broadcasting and the vetting of program proposals.

In order to avoid political pressure being applied to the CCA through the funding mechanism, consideration should be given to funding at least in part through a levy on broadcasters. This levy could include licence fees and an annual regulatory fee, but should not include fines.

Local Public Service Broadcasting

The draft Code concentrates solely on TRM as a national broadcaster and leaves local public stations out of consideration. As the Code neither mentions those stations, nor provides a mechanism for their transformation, their legal status will be unspecified. This is a serious shortcoming of the draft, since they may be simply be liquidated as illegal, or privatised – though no mechanism for this is provided in the draft Code.

Experience in many countries shows that, especially on small markets, local broadcasting (both radio and especially television) is not commercially viable. Therefore, once national commercial broadcasting develops, it can be expected that local commercial stations will either go out of business, or will join into networks, with a small quantity of local news provided as opt-outs from network programming. In many countries, PSB broadcasters are the only providers of local or regional programming.

This should be taken into consideration in planning the future of broadcasting in Moldova.

Thought should be given to incorporating some or all of these public local stations into TRM as its local/regional centres. Alternatively, they could remain as separate entities, but should be covered by the same law as TRM, in order to achieve full legal clarity and compatibility between national and local PSB.

The draft Code should be changed to regulate local public stations and ensure their survival as truly independent broadcasting organisations.

European Standards

In addition to the matter of the independence of the broadcasting regulatory authority (CCA) and the public service broadcaster, the following provisions require amending to comply with European standards, in this case the Convention on Transfrontier Television:

a. Article 2(1) The definition of advertising
b. Article 3, European Works
c. Article 4(2), Jurisdiction
d. Article 13, Events of Major Importance
e. Articles 28-30 (jurisdiction)
f. Article 19, Advertising
g. Article 20, Sponsorship

h. Article 30, Re-broadcasting

Also other provisions should be brought into line with European standards, as explained in the detailed analysis of the Code below.

Ownership and Plurality

Issues of ownership and plurality are inadequately addressed. While the Council has a duty to preserve plurality, it is given no guidance or powers as to how to do this. Details of ownership rules for broadcasting will have to be debated in Parliament, and may take a long time to agree. In the meantime, at the very least, the criteria for awarding a licence should include the desirability of ensuring there is a plurality of owners and thus a plurality of sources of news and information. It would also be advisable for the criteria to include the desirability of encouraging competition.

Restrictions on foreign ownership (where the 'foreigner' is from the European Economic Area) are contrary to the Treaty of Rome and so will be considered unacceptable under EU law.

Digital Switchover

As of 2015, frequencies used for analogue transmission will no longer be protected by the ITU. The European Union is committed to completing digital switchover by as close to 2012 as possible. Moldova will also face this challenge in the coming years, so preparation for it should begin as soon as possible. As now drafted, the Code will fail to provide a legal framework for this process.

IV. DETAILED ANALYSIS

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of the Law

The Experts welcome the initial statement of the scope of the law, setting the Code firmly within a public policy context. It would be helpful to expand on the rights which the law seeks to protect, as set out in the "Informative Note": the rights of program consumers (viewers and listeners) to receive accurate and objective information, contributing to the free formation of opinion; and the rights of broadcasters and service providers to enjoy editorial freedom and freedom of speech.

Article 2. Meaning of Used Terms

(c) *Radio broadcaster*. The term is clearly a mistranslation; here and throughout the text, it obviously refers to both radio and television broadcasters. This error should be removed from the final version of the translated Code.

(d) *Public radio broadcaster*. Definition of terms is not the place to introduce institutional and structural (and indeed political) elements like "the activity of which is supervised by the society through the Coordinating Council of the Audiovisual". In any case, the experts have

serious concerns about the extent to which the public broadcaster is supervised by the Coordinating Council of the Audiovisual ("CCA"). This is explored in greater detail below.

(f) *Service provider.* It is not clear why "service providers" are referred to as they are in this Code. The CCA only has authority against those it licences (and the public broadcaster); it has no sanctions against service providers. In any case, it is the radio broadcaster, not the service provider, who has editorial responsibility and is accountable to the CCA. Throughout the Code there are instances where service providers are expected to comply with matters which are the responsibility of the broadcaster/re-broadcaster and in these cases, it can be deleted.

(h) *Audiovisual communication.* This includes in its scope program services delivered by internet. This reference should be removed, as there should not be any attempt to regulate the internet to the same standards as television and radio. Both the European Commission and the Council of Europe are currently considering whether to introduce some basic regulatory standards for all linear audiovisual services, regardless of the means of transmission. This would include 'television' (but not 'radio') services delivered over the internet. It would not be appropriate for the Republic of Moldova unilaterally to seek to regulate such services in advance of any European agreement. However, the Code should be kept under review to ensure it is consistent with developing European regulation. In the meantime, it should be remembered that the general law (criminal, copyright, etc) applies to on-line material, as it does off-line.

(j) *Local production.* This is actually a case where "service provider" should be added to those who can create or produce material which falls within this definition. It should also be remembered that – while the intention to promote development of Moldovan audiovisual production is quite understandable - under EU law promotion of program production by domestic broadcasters and producers by creating a quota of such works is seen as a case of discrimination against broadcasters and producers from other Member States. However, EU rules do provide for the promotion of audiovisual production in the national (State) language.

(l) *Advertising.* The definition should be extended to include messages with potential non-commercial intentions, "to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster itself." This is in compliance with Article 2(f) of the Convention on Transfrontier Television. This extended definition would include, for example, political advertising (assuming the intention is to permit political advertising).

(p) *Event of major importance.* It is not clear how an event which is not organised can fall within this category; how could it be broadcast? Furthermore, this category should only refer to events which are of *major importance*; not merely of interest, and to a significant part of the viewing public. The list of events which qualify as set out in Article 13 are all organised events of major importance. It is recommended that this definition is reworded: "any organised event which is of major importance to a significant part of the public".

(w) *European audiovisual works.* The definition should be revised to be fully in line with Article 2 (e) of the European Convention on Transfrontier Television. In future, closer alignment with Article 6 of the Television without Frontiers Directive will be required.

Article 3. European Audiovisual Works Broadcasting

Given the high requirements for broadcast in the State language (70% in most of the country), it is surprising that only 10% of output should be European audiovisual works. Article 10(1) of the Convention on Transfrontier Television requires that, where practicable and by appropriate means, a majority proportion of output (excluding time for news, sports events, games, advertising, teletext services and teleshopping) should be for European works. The Convention makes clear that it is not expected that all broadcasters reach this proportion immediately, but that a progressive plan to broadcast a majority of European material should be set out, based on suitable criteria.

It is recommended that this Article is revised to reflect Article 10(1) of the Convention. It is also recommended that it is made clear that the provision only applies to television services, and not to radio. This is for two reasons: first, the Convention does not apply to radio, and second, as radio is in any event produced locally, it automatically qualifies as European.

Article 4. Radio Broadcaster under the Incidence of the Legislation of the Republic of Moldova

(2) There appears to be a misunderstanding of the provisions of Article 5 of the Convention on Transfrontier Television; the criteria set out in Article 4(2) of this Code *only apply* if it has been determined that the broadcaster is *not* established in another State which is a Party to the Convention. It is recommended that this paragraph is revised to add: "The radio broadcasters to which none of the criteria provided in p.(1) apply, *and who are not established in another State which is a Party to the Convention on Transfrontier Television,* are to be considered to be under the incidence of the legislation of the Republic of Moldova….."

(5) The two derogations to this principle which are set out in Article 30(1) and (2) should be referred to here.

(6) There are several problems with this provision. First, the restriction on who can hold the majority of shares does not take account of the ability to transfer a broadcasting licence, as provided for in Article 26. Second, it would appear to prevent there being any market in broadcasting companies. Third, if it is intended that this provision will support plurality in broadcasting services, it does not do so. There is no restriction on the number of services any one individual or legal entity can found, nor are there restrictions on the concentration of services within a geographic area. Under the law as it stands, there is nothing to prevent one body from holding all the licences covering any particular part of the Republic of Moldova, which would be contrary to the principles of plurality. It is recommended that further thought is given to this issue by policy makers, and additional provisions included in the Code to ensure there is plurality. A way of doing this without major redrafting would be to include a consideration of plurality into the licensing criteria in Article 23.

(7) As the Republic of Moldova has long-term intentions to join the European Union, it must be pointed out that a restriction on European ownership is contrary to The Treaty of Rome. The wording of the limitation – as less than the percentage necessary to block decisions – may be legally unclear. If, under the law of the Republic of Moldova, there is a clear percentage which applies, then this should be stated. However, if different percentages apply to different types of decision, then a clearer test should be inserted. If the intention is to retain limits on

foreign ownership (pending joining the EU), then perhaps a figure of 20% should be inserted for the sake of clarity.

Article 5. Classification of Radio Broadcasters

No comment.

CHAPTER II. AUDIOVISUAL COMMUNICATION PRINCIPLES

Article 6. Guarantee of Morality and Protection of Minors

(1) This provision is needed and is in line with accepted standards.

(2) as above, though the term “unjustified violence” is not clear and would require further definition. The European Convention on Transfrontier Television bans the showing of program items which “give undue prominence” to violence; this could be the formulation to adopt in the Code.

(3) This provision contradicts paragraph 2, as it permits the broadcasting of program items which are banned under the preceding paragraph. It says such items can be broadcast “only outside prime time” which includes morning and afternoon hours when children are likely to be watching television. And it requires “the presence of a visual warning sign during the entire program”, which is not possible on the radio.

A solution to the contradiction between paragraphs 2 and 3 can be found in Article 22 of the Television Without Frontiers Directive which graduates the harm that can be done to minors and provisions relating to such programs:

“1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programs **which might seriously impair** the physical, mental or moral development of minors, in particular programs that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programs which are **likely to impair** the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts”.

If this solution is adopted in the Code, then paragraph 2 could ban the broadcasting of programs “**which might seriously impair** the physical, mental or moral development of minors”, while paragraph 3 could speak of “other programs which are **likely to impair** the physical, mental or moral development of minors”. The provision on the time of their broadcasting could either speak of parts of the day when “minors will not normally hear or see such broadcasts”, as in the Directive, or apply the widely used solution of “the watershed”, i.e. the hour in the evening before which they should not be shown. This provision could also mention that trailers of such programs shown on television before the “watershed” hour should not contain inappropriate material.

It might be a good idea for the Code to authorise the CCA to develop a code of broadcasting standards (in consultation with the broadcasters themselves, and with the general public) where these and other general principles applying to all broadcasters are defined in more detail, so that both the CCA and the public can have recourse to such a code, and that broadcasters know the criteria by which their programming activity will be judged.

Article 7. Political and Social Balance and Pluralism

(1) The mention of re-broadcasting in this context is controversial. Care must be taken to ensure that if a foreign program service is re-broadcast there is no double jurisdiction, in that the Moldovan re-broadcaster would be responsible for the contents of a program service transmitted by a broadcaster established in another country and subject to its jurisdiction. This will be dealt with in detail under Articles 28-30.

(2) This principle is commendable.

(3) This principle is too vague and general, principally because it is not clear whether this refers to unpaid air time that candidates in local government, general or presidential elections should be granted by the public service broadcaster during the electoral campaign, or to the broadcasters' own news and current affairs programming.

Election coverage is usually regulated in detail in three areas: principles of granting unpaid air time to candidates on the public service station; coverage of the electoral campaign in news and current affairs by both public and private broadcasters; rules, if any, for purchasing advertising time to address the electorate (it is not clear whether this is excluded by the definition of advertising in Article 2 (l)). In fact, this is already done quite extensively in Article 47 of the Elections Code of the Republic of Moldova, No.1381-XIII from 21.11.1997 (as amended). Therefore, paragraph 3 should refer to this law, or "to the legislation in force" regulating the behaviour of broadcasters during electoral campaigns[5].

(4) The rule that a news item can only last 90 seconds is impracticable and constitutes an unacceptable form of interference with editorial independence. There will undoubtedly be times when news stories require much longer coverage. This provision should be deleted.

Article 8. Editorial Independence and Freedom

(1) This provision is internally contradictory: on the one hand it proclaims the broadcaster's freedom, but on the other it states that that freedom must be exercised "to protect the idea of the independent and democratic, jural State of the Republic of Moldova". This is a limitation of freedom of expression that violates Article 10 of the European Convention of Human Rights. Moreover, if someone has a licence to broadcast a music program, how is that broadcaster going to fulfil that obligation?

Freedom of expression means just that. There may be legal limitations on that freedom specifying what the broadcaster may <u>not</u> say, but there can be no legal obligation on what he or she <u>must</u> say, especially as such an obligation could easily amount to censorship (banned under paragraph 2) by banning any content that is seen as critical of the State. The obligation

[5] The CCA reportedly approved a concept of "Electoral Campaign's Media and Political Coverage" some time ago. If so, then these rules could be incorporated into the Code of Broadcasting Standards that the CCA could develop, as proposed here, to define more detailed standards in this and other fields.

"to protect the idea of the independent and democratic, jural State of the Republic of Moldova" should be deleted.

Furthermore, this provision refers to "the principle of opinion pluralism in compliance with the legal framework". However, there are no mechanisms set out in this Code to ensure there is any pluralism. Pluralism of opinion will only come about if the CCA is specifically empowered to protect pluralism through the licensing process. This is dealt with under Article 23 below.

(2) No comment.

(3) While this is a commendable provision, it appears to be contradicted by paragraph 1.

(4) As above. The provisions of paragraphs 2-4 can only work if the reference to protection of the State in paragraph 1 is removed.

(5) The phrase "the regulatory standards issued by the Coordinating Council of the Audiovisual" probably refers to its power under Article 40 (n) "issues decisions having the nature of regulation norms in order to fulfil its attributions stipulated in the present code". This is an important but vague power that needs to be more clearly specified.

It could be redefined into an obligation to develop and issue the Code of broadcasting standards referred to above. This would give broadcasters and the general public more legal certainty and would reduce the risk of "decisions having the nature of regulation norms" being adopted on a case-by-case basis in a potentially inconsistent way.

(6) The legal intent of this provision is not clear. As it stands, it appears to be a descriptive sentence. However, it could also be read as implying a legal obligation on broadcasters, imposed by the Audiovisual Code, to respect and honour codes of ethics, additionally implying the CCA's responsibility for ensuring that this is done.

If this paragraph is merely descriptive and explanatory, then it should be deleted, as it does not create a legal norm and is therefore unnecessary. If, however, it is intended to create a legal norm, then it should be deleted, too, because neither legislation, nor the broadcasting regulatory body, should interfere with what is properly described in the article as self-regulation by journalists and broadcasters – especially in the field of journalistic ethics.

Article 9. Free Program Service Reception

(1) The provision that "Entrepreneurs in construction business, institutions managing housing resources, administrators of associations of privatised apartments owners, associations of co-owners in condominium, as well as other managers of housing blocks or any other type of housing shall take all the necessary measures with the view of ensuring the provision of qualitative program services for tenants by service providers" places on the individuals and institutions it mentions a responsibility for the content of programming reaching the audience. This is unacceptable, as it gives them an unspecified power to control and possible censor programming reaching inhabitants of a building (probably via cable television).

The second sentence should be deleted.

(2) This provision is incomprehensible (probably due to translation).

(3) This matter has already been dealt with in Article 6. This paragraph should therefore be deleted.

(4) This provision probably seeks to protect broadcasters and cable operators against practices engaged in by some unscrupulous businessmen. This provision should be deleted, and the matter should be regulated, if needed, elsewhere.

(5) This obligation is impracticable and excessive. This obligation is meant to protect consumers, but it places excessive requirements on broadcasters, especially as it is not clear by means of which mass media or prime time radio or television programs the audience should be notified of program changes. It is in the interests of the broadcasters themselves to ensure that audiences are aware of the program schedule. Viewers and listeners will cease to tune in to a service if they feel they are being misled about what is on offer. This is therefore not a matter which requires regulatory intervention and can be deleted.

(6) & (7) No comment is required.

Article 10. Rights of Program Consumer

(1) – (4) These principles are commendable, but we believe that the mechanism for enforcing these rights is inadequate. In order to be enforceable, the rights of consumers must be reformulated into realistic obligations on the broadcasters **and set out as clear licence conditions**, with the CCA called upon to supervise the discharge of those obligations. For example, the licence could require broadcasters to ensure that news is accurate and impartial.

(5) The requirement to provide accurate and impartial news can be set out in the Code (and licences). *How* to do it (through transparency, balance and pluralism of views) is a matter for non-legally binding guidance.

Article 11. Protection of Linguistic, Cultural and National Heritage

General Comment:

These language and production quotas are clearly motivated by an understandable desire to protect the national culture and language and promote domestic audiovisual production. However, many are possibly excessive and too expensive for broadcasters. Moreover, they are incompatible with European Union rules (which do not allow discriminating against other Member States, which is exactly the effect that domestic production quotas have) and will create a problem if further alignment of Moldovan broadcasting legislation with EU rules is intended in the future.

(1) The requirement that from January 01, 2010 at least 70% of the number of frequencies shall be offered to program services in the state language is unclear for technical reasons, as a frequency may be used to broadcast one local program service, or may be part of a regional or national network. In other words, it is not a good unit of account for calculating the 70%. In any case, the number of frequencies is not constant. Accordingly, this requirement may be impossible to implement.

This requirement should be reformulated and made realistic. Otherwise, it will be impossible to implement and enforce.

(2) The need for this provision is not clear. Presumably it is intended to promote integration of members of national minorities, as they will receive programming in the State language also in their own stations, dedicated to serving a particular minority. However, there is little danger that they will use all their viewing or listening time to receive programming from those stations alone, and it reduces the time for programming in their own language, thus infringing on their rights.

This paragraph should be deleted.

(3) The meaning of this provision is not clear.

(4) It is not clear whether this refers also to minority stations. The OSCE Guidelines on Minority Broadcasting require that undue or disproportionate requirements of dubbing, subtitling or other translation are not made on minority language broadcasting.

This paragraph should be deleted.

(5) No comment.

(6) No comment.

(7) The requirement that from January 01, 2010, at least 80% of the volume of program services with national coverage shall include own production or own and local production and that 50% of its volume shall be broadcast within prime time may prove unacceptably expensive for broadcasters.

The quotas should be lowered to 50% and 30% respectively.

(8) The need for these requirements is not clear. Does this mean that currently news and current affairs are broadcast by Moldovan radio and television stations in languages other than the official one?

Also in this case the scope of these requirements should be made clear (e.g. whether it applies to minority stations, or not).

(9) This requirement may be excessive. The quota should be made more realistic (in Poland, a similar quota is 33%).

Article 12. Protection of National Information Space

This article is unnecessarily defensive and combative in nature. It is common for broadcasting laws to state that broadcasting frequencies may not be used without a licence to broadcast and this is usually sufficient, because the terms of the licence will reflect the spirit of the legislation in force, as well as the public policy goals it promotes. As it is, this article creates the impression that the National Information Space is under threat and needs to be protected.

Moldova is a member of the Council of Europe, party to the European Convention on Human Rights and to the European Convention on Transfrontier Television, so it is already committed to the free flow of information regardless of frontiers and to an open European audiovisual area, including the transfrontier transmission and the retransmission of television program services.

This provision should be deleted as unnecessary.

Article 13. Access of Program Consumers to Events of Major Importance

(1) This paragraph and the whole article seek to implement Article 9a of the European Convention on Transfrontier Television and Article 3a of the EU directive on Television Without Frontiers. However, they do so by creating another right whose fulfilment may be very difficult in practice.

This paragraph should be reformulated to avoid creating a right which cannot really be guaranteed and enforced[6].

(2) This paragraph shows that in reality this article is not meant to protect consumers, but to protect the public service broadcaster from competition. In the two European instruments mentioned above, the idea is to protect the general public from the practice of some broadcasters to buy rights to major events and then to show them on pay channels only, thus depriving those who do not, or cannot afford to, watch such channels of the opportunity to see such events. Here, the intention is different. Still, the meaning is not clear – if paragraph 1 creates a right of access to major events for consumers, does this mean that the public broadcaster <u>must</u> carry all the major events listed in paragraph 3? And what if it cannot afford to buy rights to <u>all</u> European and world sport championships in all the disciplines in which such championships are held? Article 55 provides for the situation when TRM may renounce its "pre-emption rights", but this is not enough to protect consumers' rights (see comments under Article 55).

This guarantee that the public service broadcaster must have an automatic right to show all major events creates an unfair advantage. Moreover, this automatic right may be impracticable, if the public service broadcaster cannot afford to pay for the rights to all the events listed in paragraph 3. If the idea is to protect the audience and not one broadcaster, then the provision should make sure that major events can be shown by any nationwide, free-to-air broadcaster. For a long time, this will still mean the public service broadcaster, as no private broadcasters exist yet, but ultimately they will appear.

(3) The list of events of major importance is used partly for political purposes (the obligation to carry plenary sessions of Parliament, government sessions, important diplomatic events), not in keeping with the two European instruments mentioned above. In reality, then, this article is meant among other things to protect the politicians' right to present themselves to

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[6] Paragraph 1 of Article 9a of the European Convention on Transfrontier Television reads: "Each Party retains the right to take measures to ensure that a broadcaster within its jurisdiction does not broadcast on an exclusive basis events which are regarded by that Party as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Party of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Party concerned may have recourse to the drafting of a list of designated events which it considers to be of major importance for society".

the public. In any case, it is too extensive and places an unacceptable burden on the public broadcaster.

Items (a), (b) and (c) should be removed from this list. They could be moved to the chapter on the public service broadcaster as part of that broadcaster's obligations, but not in such a way that TRM should have an obligation to carry all sessions of Parliament, government sessions and diplomatic events. Item (f) should be defined much more clearly. Item (g) should be deleted, as international conventions and treaties include no mandatory lists of major events, and the creation of such a list is a national competence.

In general, the system created by Article 3a of the Television without Frontiers directive, and Article 9a of the European Convention on Transfrontier Television, should be studied more closely and introduced into the Code fully, and not in a way designed to serve purposes other than the protection of the rights of the audience.

Article 14. Ensuring Confidentiality to Information Sources

In general, this article is in line with European standards, as laid down, for example, in Recommendation No. R (2000) 7 of the Council of Europe Committee of Ministers on the right of journalists not to disclose their sources of information.

The only reservation concerns paragraph 4 ("The confidentiality of information sources obliges, instead to assume responsibility for the correctness of provided information"). There is no such principle in the Council of Europe recommendation. In any case, it is not necessary, if, as noted above, journalistic ethics (which always places great emphasis on the accuracy of information) is a matter of self-regulation. Protection of journalistic sources is not a privilege granted in exchange for accurate information, but constitutes a basic condition for journalistic work and freedom as well as for the freedom of the media.

Of course, this provision should not be in this law, but in the general Press Law, adopted in Moldova in the 1990s, as the principle should apply not only to broadcast but to all journalists.

Article 15. Protection of Journalists

This article is also welcome, except that paragraph 3 does not go far enough in offering protection against searches and seizures on journalistic premises. It should be extended to cover all types of buildings where journalistic work product is stored, not just broadcasters' offices. More importantly, though, the provision should offer explicit safeguards to prevent the protection of sources from being sidestepped by the use of police search warrants.
Also this provision should be transferred to the general Press Law.

Article 16. The Right to Response, Rectification, and Equivalent Remedies

This article is in keeping with European standards as laid down in Recommendation Rec(2004)16 of the Council of Europe Committee of Ministers on the right of reply in the new media environment, though of course it should be transferred to in the Press Law.

Some confusion may be created by the use of the word "compensation" in the text. This is probably due to incorrect translation of the word "remedy". Otherwise, this could imply

financial compensation which would be unacceptable as a vague regulation in a broadcasting law.

Article 17. Broadcasting Notifications on the State of Emergency

(1) The notion of “threat to public security or constitutional order” is too vague to provide legal certainty and could be abused for political purposes. At least the word “serious” or “grave” should be added to prevent potential abuse of this article.

(2) Also here legal certainty is lacking in that it is not clear who may request the broadcasting of this information. This should be added, so that abuse of this provision can be prevented.

Article 18. Respecting Copyright and Connected Rights

(1) - (4) require no comment other than to say it is not clear who is responsible for enforcing this part of the Code. Copyright should be a matter left to the courts, and not the regulator.

(5) – (7) No comments are required.

Needless to add, all this should be regulated in the copyright law, and not in this law.

CHAPTER III. ADVERTISING, TELESHOPPING AND SPONSORSHIP

Article 19. Advertising and Teleshopping

(2) It is unclear in this, and paragraphs (3) and (4), who has editorial responsibility for advertising and teleshopping. It should be made absolutely clear that it is the broadcaster (or re-broadcaster) who has responsibility, not the service provider. It is the broadcaster, or re-broadcaster who is subject to the licensing/authorisation regime and against whom the CCA can bring sanctions for non-compliance. The service provider has no such relationship with the CCA and therefore should not be given any ultimate responsibility.

(3) See above.

(4) See above.

(7) The Experts have not seen the Law on Advertising. However, if not covered in the Law on Advertising, this Code should include the requirements set out in Article 11.1 and 11.2 of the Convention on Transfrontier Television:

- Advertising and teleshopping shall be fair and honest.
- Advertising and teleshopping shall not be misleading.

(10) The prohibition contained in Article 15.5 of the Convention on Transfrontier Television should be specifically included: “Teleshopping for medicines and medical treatment shall not be allowed”. This prohibition extends to medicines which can be obtained without a prescription.

(11) The provision set out in Article 15.2(e) of the Convention on Transfrontier Television should be added to ensure that advertising and teleshopping for alcoholic beverages: "shall not place undue emphasis on the alcoholic content of the beverages".

Article 20. Requirements for Sponsored Programs

(1)(b) requires the sponsor's name and trademark to be shown throughout the sponsored program. This is considerably more than the provisions set out in Article 17.1 of the Convention on Transfrontier Television, which merely requires credits at the beginning and/or end of the program. Having the sponsor's name and logo on screen for the duration of the program is very intrusive, and not in line with international practice. It is also not appropriate for sponsored radio programs. It is recommended that this provision is replaced with a requirement for credits at the beginning and end of the sponsored program, and possibly also at the beginning and end of advertising breaks.

(3) To comply fully with Article 18.2 of the Convention on Transfrontier Television, there should be added, "to the exclusion of any reference to medicines or specific medical treatment available only on medical prescription."

(4) Article 18.3 of the Convention on Transfrontier Television says that "sponsorship of news or current affairs programs shall not be allowed." It is recommended that to better comply with this, Article 20(4) should be amended: "News programs *and other* programs on political issues cannot be sponsored."

Article 21. Broadcasting Conditions for Commercials or Teleshoppping

(2) As stated under Article 19(2) above, it is the broadcaster, and not the service provider, who has legal responsibility for all commercials which are broadcast. It is therefore their logotype, and not that of the service provider, which should be shown. It should be stated that this provision does not apply to radio.

Article 22. Amount of Advertising and Teleshopping

The provisions as drafted are in compliance with the Convention on Transfrontier Television. But it should be noted that the Convention only applies to television, not radio. There is no requirement to restrict the amount of radio advertising, although it is permissible for States to do so if they so determine.

CHAPTER IV. LICENCES

Article 23. Granting of Broadcasting Licence

Recommendation Rec(2000)23 of the Committee of Ministers on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector advises that the procedure for broadcast licensing should be clear and precise. While Article 23 is an improvement on the current Law, there are a few matters which should be clearer and more precise.

(2) It is not clear whether requests for such broadcasting licences can be refused. If so, the grounds for refusal – and the criteria for acceptance – should be set out in the Code.

(3) It is a vital element of a fair and open licensing process for as much about the process to be set out clearly in writing, whether in the law itself, or in separate Guidelines. The CCA should be required to publish the procedures they will use for granting licences. While it is acceptable for the CCA to have responsibility for setting their own licensing procedures, the conditions which are applied to licence grants should be set out clearly in the Code.

(4) As stated under Article 4(7) above, if the Republic of Moldova hopes eventually to become a member of the European Union, it will not be able to restrict foreign ownership from other European Economic Area States.

(5) There is a problem in the translation of this provision, as it is not clear which sort of licence is granted for 7 years. Is it for radio services? The length of these licences would be short, if it were not for the provisions for extension in Article 24. This is because it is very expensive to start a new broadcasting service, particularly television, and it takes a number of years for operators to recover their initial costs.

(6) This provision implies that the CCA will determine the program service requirements for new services, rather than leaving it to the market to decide. This is reasonable, but it would be helpful for there to be a requirement on the CCA to include in the notification an explanation of why they have set the requirements that they have.

The standard application should also include a full business plan by the applicant covering the licence period, in order to enable the CCA to determine whether the applicant would be able to afford to operate the service for the duration of the licence.

Applicants should also include a note of any other interests they hold in media, both broadcasting and the press. This is so the CCA can take account of plurality when making licensing decisions.

Evidence of how the applicant's proposals will meet society's needs should also be required with submissions.

(8) A 20-day time limit seems very short for the CCA to make a proper analysis of the submissions, particularly if a large number are submitted.

(9) The Code refers to "an objective and impartial examination"; to be objective and impartial, the CCA will need to base their assessments on objective and impartial criteria. These criteria should be set out in far greater detail (and not left to the discretion of the CCA). Specific points include:

- How will "society's needs" be determined, or measured? This criterion implies that decisions will be made alongside consideration of research or other data. If so, then applicants should be invited to include with their submissions evidence that their proposals will meet "society's needs". This can be done through research and other evidence of support.

- The applicant's financial and business proposals must be a major consideration for a licence. There is no point granting a licence to someone who has made promises they cannot afford to keep.

- The CCA should be empowered to include considerations of plurality and media concentration in their deliberations.

(10) It is not clear why there should be no appeal from licensing decisions, especially given the provision in Article27(2) for the court to cancel a licence if the licence contest violated the provisions of the Code, and the general provision in Article40(5) for the CCA's decisions to be subject to appeal by any person who feels harmed. There appears to be an inconsistency between these various provisions. Furthermore, Article 6 of the European Convention on Human Rights allows for appeals to an independent and impartial tribunal where a decision has determined civil rights. It is strongly recommended that the phrase, "the decision cannot be appealed in court" is removed.

Article 24. Broadcasting Licence Extension

(2) The reference to Article 22, p. (5) should read, "Article 23". Also, as the law now reads, there is no limit to the number of times a licence can be extended. It is recommended that there should be a limit, in order to permit an element of competition to the market. Policy makers might wish to limit the number of times a licence can be extended to only once or twice. Incumbent licensees would have the opportunity to re-apply for the licence when it was re-advertised, but they would do so facing competition. Introducing competition is likely to ensure that the quality of services offered to the public remains as high as possible.

Article 25. Broadcasting Licence Indicators

There are several additional matters which should be included in the broadcasting licence:

- The licence should set out the fact that broadcasters are obliged to meet the terms of this Code, together with any secondary legislation which might arise, and any Code on content standards issued by the CCA.
- The licence should also state that broadcasters are obliged to comply with the relevant terms of all other applicable laws (for example, the Law on Advertising).
- The licence should say that broadcasters must comply with requests for information from the CCA in pursuance of their regulatory duties.
- It is fairly normal for broadcasters to be required to record all their output, to retain these tapes for a period, and to hand over the recordings to their regulator if required for monitoring or complaints-handling purposes. This obligation should be included in the licence.
- The licence should also set out the terms upon which licences may be amended. It is reasonable to allow minor amendments to licences, but significant changes should not normally be allowed. Such a major change could be unfair as it would call into question the basis of the original licence award, and give unsuccessful competitive applicants good legal grounds to challenge the regulator's decision to permit the change. However, there will often be good grounds for permitting minor changes, to reflect changes in tastes and interests of the audience.
- Sometimes the regulator may need to impose changes in licences, for example if there is a change in other laws, or international agreements. This ability needs to be allowed for specifically in the broadcast licence.

Article 26 Broadcasting Licence Transfer

(1) It is not clear how a licence can be transferred, given the limitations on holdings set out in Article 4(6). It is recommended that Article 4(6) is changed to permit transfers with the permission of the CCA.

In order to provide a degree of predictability and business certainty to broadcasters, the Code should set out the criteria which the CCA will apply when considering whether or not to approve a request for a transfer of a licence.

Article 27 Broadcasting Licence Withdrawal

(1) This Article is written as though the CCA is obliged to withdraw the broadcasting licence in the event of any of (a) to (g) occurring. Instead, the CCA should have discretion as to what, if any, sanction to apply, depending on the severity of the breach and all relevant circumstances. It is recommended that the first line be amended to read, "The CCA *may* withdraw the broadcasting licence…". See also comments on Article 38.

(d) requires new services to be launched within 6 months of a licence being granted. This appears to be quite a short period of time, especially for national services, or services covering large regions. It is recommended that a longer period be given (perhaps 9 months) to enable new transmission networks to be built over larger areas.

(2) It has been pointed out that this provision appears to contradict the provision on Article 23(10) which does not allow appeals from licensing decisions. It is recommended that this provision is retained, and the prohibition on appeals is removed.

Article 28. Re-Broadcasting Authorisation Granting

(4) Broadcasters require as much certainty and clarity as possible about any regulations which will effect their business. While certain conditions are contained in the Code, it is strongly recommended that any additional criteria which will be considered when deciding whether or not to grant an authorisation for re-broadcasting should be set out fully in this Code.

(7) To this should be added evidence of consent of the producer of the program services which are to be re-broadcast, and any other evidence the CCA needs to ensure all of its criteria for deciding authorisations are fulfilled (see (4) above).

Article 29. Program Services Re-Broadcasting Conditions

(3) There may be instances when a re-broadcaster needs to withdraw a program on very short notice, for example where it comes to their attention that the program content does not meet the standards required by the CCA. In such cases, it would not be practical for the re-broadcaster to inform the CCA in advance. It would be unreasonable for the re-broadcaster to be punished for removing offending material, just because the CCA had not been notified. Therefore it is recommended that this Article is amended to read, "*Whenever practical to do so* re-broadcasting authorisation holders must notify beforehand…"

Article 30. Free Re-Broadcasting

(2) Council of Europe States which are signatories to the Convention on Transfrontier Television should be added to the list of territories which are exempt from the need for a re-broadcasting authorisation.

(3) This provision is contrary to Article 4 of the Convention on Transfrontier Television which states that freedom of reception shall be guaranteed, and that retransmission can only be restricted if program services do not comply with the terms of the Convention. Article 30(3) of the Code is more restrictive than Article 4 of the Convention. Since Moldova is party to the Convention, this provision must be changed to ensure compliance with the Convention.

Article 31. Technical Licence Granting

The Experts are pleased to see that the previous arrangements, which involved broadcasters having to obtain three different licences, have been simplified. In order to simplify the process even further, it may be possible for the CCA and the National Regulatory Agency for Telecommunications and Informatics ("NRATI") to agree that applications for the Technical Licence can be delivered to the CCA which will then pass it on to the NRATI.

The new arrangements will require good working relations between the CCA and the NRATI. This is all to be encouraged, and the Experts are pleased to see this included in the draft Code.

Article 32. Supervision of Technical Parameters

No comment.

Article 33. Amendment of the Technical Licence

No comment.

Article 34. Technical Licence Withdrawal

No comment.

Article 35. Development of Program Service Territorial Coverage Strategy

(2) It would be useful for the CCA to publish its annual review of the strategy on covering national territory (perhaps on its website), in order to inform and get views from interested parties.

Article 36 National Plan for Radio-electric Frequencies

Rec(2000)23 of the Committee of Ministers recommends that broadcasting regulatory authorities should be involved in the process of planning the range of national frequencies allocated to broadcasting services. There is no mention of the involvement of the CCA working with the NRATI on the development of the National Plan, although the Experts would hope that the CCA's advice would be sought.

CHAPTER V. CONTROL AND SANCTIONS

Article 37. Exercise of Supervision and Control Activity

(4) This paragraph makes a reference to Article 26 paragraph 3. There is no paragraph 3 in Article 26. In any case, this paragraph should be moved to the chapter on licensing.

Article 38. Sanctions

This article should be considered together with Article 27, dealing with grounds for possible withdrawal of a licence to broadcast.

(1) This paragraph provides for a very limited range of sanctions, with licence revocation possible under Article 27 even for relatively minor offences. The phrase "subpoena of becoming legal" is not clear.

The range of possible sanctions should be extended, by adding: warnings, deprivation of the right to broadcast advertisements for a specified time; and suspension of a licence for a specified period of time. A way should be found to prevent fines from being imposed in an arbitrary manner. It is particularly important to ensure that fines are not used to force a broadcasting company out of business; if the intention is to revoke a licence, then this should be the sanction which is applied, **not** a fine which is too high for the broadcaster to pay. Therefore it is important that the factors which will be taken into consideration when applying a fine are set out. These should include matters such as the severity of the breach, the compliance record of the broadcaster, whether the broadcaster has benefited financially from the breach, the ability of the broadcaster to pay, and any remedial steps the broadcaster has taken. The maximum level of fines for different types of broadcasters should also be set out.

(2) The "violation" of the Code for which sanctions can be imposed is not defined or qualified in any way, meaning that even minor violations can be grounds for sanctions. Replace "In case of violation…" with "In case of serious violation…"

(3) See comments under Para 1 above.

(4) No comment required.

(5) This paragraph should state that license revocation can happen only in cases of repeated serious violations of the Code.

(6) The provision is not clear.

Three additional paragraphs should be added to this Article:

- Broadcasters should be notified of any investigations against them; they should be informed of the charges against them and should have an opportunity to present their case to the Council on the given matter;

- The Council's decision should be in writing, stating reasons, and should be made publicly available.

- Broadcasters should have a clear right, specified in the Code, to appeal to a court against any penalties imposed on them.

CHAPTER VII. COORDINATING COUNCIL OF THE AUDIOVISUAL

Article 39. Status of Coordinating Council of the Audiovisual

(2) This provision states both that the CCA is autonomous, and that it is under parliamentary control; it cannot be both. The CCA must be independent of parliament, but **accountable** to it. For the most part, the provisions in this Code set out appropriate mechanisms of accountability, through the publication of quarterly reports, an annual report, and the setting of budgets.

We have serious concerns about the status of the CCA in relation to the public broadcaster. These are set out in detail below under Articles 57-63. The wording of this provision in Article 39(2) does not need amending as long as our recommendations are adopted to limit the extent of the CCA's supervision of the public broadcaster.

Article 40. Council Attributions

(1)(a) It is reasonable for the CCA to be the body responsible for supervising compliance with obligations under their licences with regard to content standards and formats. This includes the public service obligations of Teleradio-Moldova.

(b) It is not clear from the translation what "only after the public notification of these programs" means. But it must be the case that the CCA cannot intervene *before* a program is broadcast, as that would amount to censorship.

(c) The rules on electoral broadcasts are already specified in Article 47 of the Elections Code of the Republic of Moldova, No.1381-XIII from 21.11.1997 (as amended). In addition to specifying procedures and modalities for its implementation, the CCA could – as already suggested - develop a separate, more detailed Code in this regard, after consultation with the main political parties and the broadcasters.

(d) While it is acceptable – and indeed necessary – for the CCA to monitor program content, it should not have any role in relation to proposals for program services. If the CCA is involved in vetting and agreeing proposals for programs, this gives them the power to interfere in editorial decisions which must properly belong to broadcasters. The CCA's role should be entirely post-broadcast, not pre-broadcast.

(e) it is not clear from the translation what the status, or statute, of the public radio will cover. It may not be appropriate for the CCA to be involved in approving the statute, as it might better fall within the remit of an independent Supervisory Council set up for the public broadcaster, as we propose below.

(f) – (j) All of these matters (appointment/dismissal of Teleradio-Moldova President and Directors, budget, loans auditing, and structure) should be the responsibility of the independent Supervisory Council for the public broadcaster, as we recommend below. It

would be inappropriate for the industry regulator to be so involved in the operation and management of the public broadcaster as it could lead to interference in editorial control. Furthermore, the CCA involvement would lead to a disproportionate amount of the CCA's time, energy and resources being devoted to just a single broadcaster under its jurisdiction.

(k) The conditions and criteria for the granting of broadcast licences should be set out in this Code, and not left to the CCA to decide. For the most part, they are set out in Arts 23 and 25 (subject to our comments). Licensing criteria and conditions are matters of public policy which ought to be agreed by Parliament, rather than the regulator.

(4) It would be sensible for the CCA to publish the reasons for their decisions on their website, as this would be the most obvious place for interested parties to look.

Article 41. Council Responsibilities

It is very good to set out in the Code the duties of the CCA, as this will inform all that the CCA does. The list set out here is good and full, but we recommend the following amendments:

- It is for the broadcasters, not the regulator, to ensure a plurality of ideas and opinions within broadcasts. This provision should be included in the broadcast licence.

- Although the CCA has a duty under this Article to ensure a diversity of sources of information, there are no rules setting out how the CCA is to assess and deliver plurality of ownership. At the least, this should be included in the licensing criteria.

- Again, more needs to be said in the Code with regard to ownership and how the CCA is to consider the benefits of competition when making licence awards. This could be included in the licensing criteria.

Consideration may be given to adding an additional obligation to protect the interests of minorities in the Republic of Moldova.

Article 42 Council Structure

(2) While it is compliant with Council of Europe recommendations for nominations to the CCA to be made by a Parliamentary Commission, the idea that this should be done by "taking into account the number of mandates held by the legally established Parliamentary factions" constitutes a threat to the independence and stability of the CCA. It means that the composition of the Council will most likely directly reproduce that of Parliament and will be composed of ex-members or sympathisers of parliamentary parties in direct proportion to the number of their seats. This will mean direct political subordination of the Council to the parliamentary majority.

Given that the Council's term of office is longer than that of Parliament, parties returned to power after the next election will feel they are deprived of the possibility of appointing their members or sympathisers to the Council. As has happened in many countries, they may therefore seek to change or amend the law – or seek to dismiss the Council members - in order to have the opportunity to be directly represented in the Council in the same way as the parliamentary parties in the preceding term of parliament.

This situation may recur after each general election, with disastrous consequences for the independence, professionalism and long-term stability of the Council.

Therefore, this article should be rewritten to:

- Remove the requirement for proportionality of candidates for appointment to the Council to the number of mandates held by each party;

- Extend the class of potential nominators to include major sectors in Civil Society. In order to avoid the political difficulties outlined above, we recommend there should be a majority of seats for civil society candidates;

- Introduce staggered terms for Council members (see comments on Article 43 below).

We would also recommend consideration be given to requiring the membership of the CCA to include individuals who can understand the specific interests of significant minority groups, and women.

(3) The requirement of a two-thirds majority in appointing Council members is to be welcome.

(4) A full job-description should be prepared before persons are nominated for appointment to the Council. The job description should set out not only what members have to do, but what sort of person is needed for the job. Relevant experience should always be sought, and in this case would include experience or expertise in broadcasting, engineering, finance, accounting, business management, program making, or a background in any of the creative industries.

Article 43. Council Members

(1) This is an excellent statement.

(2) We strongly recommend that the terms of the members are extended to 6 years and staggered (for example, 3 for 6 years, 3 for 4 years, and 3 for 2 years) in order to avoid losing the entire Council's expertise at the same time. This will provide a mechanism for making for the appointment of new people, as the composition of Parliament changes.

(4) One person should be confined to one term as a member of the Council.

(5) The following are all acceptable reasons for the dismissal of a member: consistent failure to attend meetings, conviction for a serious criminal offence involving dishonesty or imprisonment, bankruptcy, and physical or mental incapacity. It is recommended that "condemnation by a definite decision of the court" and "for health reasons" be replaced, and other matters as listed be added in order to preserve clarity for the reasons for dismissal.

(6) The status of "public officials" is unclear and should be seriously reconsidered if it means any form of subordination to any public authorities, as this may seriously impact on the Council's independence.

Article 44. Incompatibilities with the Position of Member of the Council

These incompatibilities are fine. It is recommended that the following words are added to (3): “or otherwise benefit financially from acting as a Council member”.

Article 45. President of the Council

(3) The President of the Council should not have the right to take part in sessions of the Executive Board of the public radio broadcaster, and should only attend those meetings if specifically invited to do so for a particular piece of business. The Council, including the President, must not be engaged in executive matters of the public broadcaster, as this blurs the distinction between management and regulation.

(8) Three weeks seems too short to undertake a proper procedure to find new members of the CCA. We would recommend the period to be at least three months.

Article 46. Remuneration of Council Members

The level of remuneration paid should be commensurate with the average salary that the members will be foregoing during their term of office. It is important not to over pay, as this can result in indirect political pressure, as members will be reluctant to go against the wishes of their paymasters for fear of losing a lucrative position.

Article 47. Council Funding

The arrangements for funding the CCA are basically sound, based on the submission of an annual budget for agreement by Parliament. However, there remains a risk that Parliament may apply political influence through the approval process, for example by refusing funds for a particular project which is considered politically sensitive. Nonetheless, it is proper that there is a degree of accountability and oversight of the CCA by the democratically elected Parliament.

Potential political pressure through funding would be decreased if the CCA could, at least in part, be funded by a levy on broadcasters. The fees for licensing should be retained by the CCA, and it would be reasonable to charge broadcasters an annual fee to go towards the costs of regulation. We would not recommend fines and penalties being retained by the regulator as this could lead to unreasonable and disproportionate regulation by the CCA in order to pay for itself. Instead, financial penalties should be paid to the State Exchequer.

Article 48. Council Organisation and Activity

This is fine.

Article 49. Supervision and Control over Council Activity

This is fine. We welcome the requirement to publish quarterly reports on how the CCA is performing in the delivery of regulation in the public interest.

CHAPTER VII. PUBLIC RADIO BROADCASTER

Article 50. Legal Status of Public Radio Broadcaster

(1) "Radio broadcaster" should be changed to "broadcaster". The term "company" (assuming it is the same in the original) should be deleted if it may lead to confusion over the legal form of TRM. Nothing else in this draft Code suggests it is a company operating under commercial law.

(2) The status of a "public legal entity" is probably regulated by other Moldovan legislation. Without studying it, it is difficult to know whether this status sufficiently protects the institutional autonomy of TRM. In any case, there is a potential conflict with paragraph 1 which calls TRM a "company", suggesting that it may be a joint-stock company, operating under commercial law.

The law regulating "public legal entities" should be examined to see whether it does not reduce the TRM's institutional autonomy. If so, the present Code should derogate from that law in order to safeguard the autonomy of TRM.

(3) This paragraph gives the Council one of its very many executive and management powers over TRM. This situation is a major structural shortcoming of the draft Code and needs to be changed fundamentally (See comments on Articles 57-63 below).

The statute of TRM should be approved, in the first instance, by its own internal supervisory body (see below), and only then submitted to the CCA for its consideration. Such a document should not be developed and approved only by the governing bodies of TRM, which is a public service broadcaster and should therefore be subject to public scrutiny.

Article 51. Company Attributions

(1)(a) No comment required.

(b) "Historical truth" is not a precise legal term and cannot serve as a guideline for TRM's program policy. "Historical truth" is an object of heated controversy in every society, so the public service broadcaster cannot be charged with the duty of imposing one version of that "truth". Delete the reference to "historical truth".

(c) The term "biggest achievements" is again a subjective concept and open to endless controversy. It cannot be a guideline for the program policy of TRM. Delete the word "biggest".

(g) This provision is fine if it means that TRM should respect the norms of journalistic ethics as developed through self-regulation by journalists and their organisations. However, it also creates the risk that this could be an enforceable legal obligation, giving the CCA the power to rule whether on a given occasion TRM did or did not respect journalistic ethics, and potentially to punish it if it did not. This should be avoided, as the regulatory authority should not deal with journalistic ethics[7].

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[7] There are cases, as in Cyprus and Lithuania, where broadcasting regulatory authorities have some powers in this regard, but these are carefully delimited and usually the regulatory authority does not have the power to judge whether journalists observed codes of journalistic ethics, or not.

Rephrase this paragraph to read: “Respect the journalists’ right to develop and be bound by self-regulatory codes of journalistic ethics, specifying professional standards in the field”.

(h) This sounds fine in principle, but could be a very expensive obligation, if it were interpreted to mean that TRM had a duty to “record [all] events and significant works … for future generations”.

This should be reconsidered.

(2) If this means a right and not a duty, then it should be obvious and need no legal guarantees. If it is not obvious, then this provision could be retained, but changed to read: “The Company has the right to record or broadcast live and free of charge – <u>when this is required by its program policy and based on its own editorial decision</u> – the sessions….”.

General comment:

Articles 51, 52 and 56 should be merged into one article defining the mission (see Appendix) and describing the specific public service obligations of TRM. This is important for a number of reasons. First of all, the public has a right to know what the public service mission is, and how it is defined. Secondly, the European Union requires a “clear and precise” definition of the public service mission. And thirdly, once commercial broadcasting develops, the existence and operation of TRM will come under attack, and one of the arguments that is going to be used is lack of a precise definition of the mission.

Article 52. Main Requirements for Program Services of the Company

(1)(b-c) Such a strong and positive obligation (Paragraph 1 states TRM “has to facilitate the following…”) could easily be interpreted to mean that TRM has no right to carry programs critical of the State or any of its authorities, as that would be incompatible with “strengthening the Republic of Moldova as a state” and with “promotion of the international image of the Republic of Moldova”. As such, these provisions are unacceptable, because they turn what is ostensibly a public service broadcaster independent of the State into a propaganda arm of the State.

Of course, “nation-building” is important and alternative language could be introduced, but it should not be capable of being interpreted in a political way as an obligation to support State authorities and as a ban on critical examination of their activities.

Paragraph 1(b-c) should be deleted as incompatible with the independent status of TRM and its obligation to serve the public. According to the “Informative Note”, “Radio broadcasters and service providers, according to the provisions of the bill, enjoy editorial freedom and at the same time have the task to ensure correct and objective informing of the population, thus, <u>contributing to the free formation of opinion”</u>. This must obviously apply also to TRM. There are repeated calls in the text for pluralistic, free, equitable, balanced and impartial information. This cannot happen when TRM has the obligations defined in these provisions.

This article should be supplemented to say that it is the task of TRM to promote racial, ethnic and gender equality, both through its programming and in its internal policies, fully to serve the minorities and promote cultural diversity. Also, an obligation to provide children’s

programming should be included, as this is usually avoided by commercial broadcasters and is one of the important obligations of a public service broadcaster.

Article 53. Editorial Independence

(2) Again the question of "compulsory standards established by the Council" appears in a way that could be read as limiting the editorial independence of TRM or any other broadcaster. Such "compulsory standards" could be very detailed and issued on any occasion, so as to pre-empt editorial decision-making by TRM. It should be repeated, therefore, that legal certainty would be enhanced if the CCA developed a code of broadcasting standards, instead of being able to issue "compulsory standards" at will. In its present form, the paragraph contradicts the very useful article on editorial independence.

Delete this paragraph, because it is descriptive and explanatory, and not a legal norm. If the Council is given the power to issue "standards" in this Code, then this is its legal competence.

(4) This paragraph only repeats the contents of Article 8 paragraph 2. Delete as unnecessary.

(5) This is an important paragraph, but it should not apply to TRM employees alone. All journalists (in print and broadcast media) should enjoy the protection offered by this paragraph.

Move to Chapter II "Audiovisual Communication Principles".

Article 54. Advertising, Teleshopping and Sponsorship

This article means that TRM is bound by exactly the same rules as commercial broadcasters in the area of advertising, teleshopping and sponsorship. This may have two consequences: (1) it may make it difficult for commercial broadcasters to develop as they will have to compete against TRM – an established broadcaster with national reach – for advertising; (2) it may make TRM dependent on advertising revenue and lead to excessive growth funded by commercial revenue and subsequently commercialisation of programming in order to maintain high advertising revenue needed to finance operations.

Consideration should therefore be given, in the interest of ensuring the quality of programming, to reducing the threat that TRM may become dependent on advertising revenue. This can be achieved by reducing the proportion of advertising in its air time, etc. Otherwise the long-term effect may be the growing similarity of programming on TRM and commercial stations.

Article 55. Pre-emption Right to Broadcast and Record

(1) The paragraph begins with the words "in equal conditions", but in reality it creates unequal conditions, giving TRM guaranteed priority in obtaining rights to major events. No international agreement or treaty guarantees such a right to public service broadcasters. The European Broadcasting Union does engage in purchasing rights to Olympic Games etc. on behalf of all member organisations, but this is a different matter.

This paragraph should be deleted as it gives the public service broadcaster an unfair advantage over commercial ones. Even the term "secondary broadcasters" used to describe

them shows that a system designed in international instruments to protect the rights of the audience is used in this draft Code to protect TRM. The matter should be dealt with in Article 13 and should, as noted above, guarantee that major events will be shown, if at all, on nation-wide channels – public or private.

(2) When TRM is unable or unwilling to use the "pre-emption right", it may – for competitive reasons – inform commercial broadcasters of this too late for them to be able to negotiate the purchase of rights to major events. In that way, no-one in Moldova will be able to watch a particular event. This is not a way to ensure respect of the right of access to major events laid down in Article 13.

Article 56. Object of Public Radio Broadcaster Activity

(1)(c) The "internal" (probably meaning domestic) and "external" (probably meaning foreign) partners" no doubt include independent producers. Regulation in this regard should be extended, as many problems develop in the relations between the public service broadcaster and independent producers.

A new set of provisions should be added, either in the chapter on TRM or (preferably) in another chapter, dealing with the relations between broadcasters and independent producers. "Independent producer" should be defined in Article 2.

(2) This paragraph is both inaccurate and unacceptable. The CCA will not really represent the public, but the parliamentary parties. Moreover, this provision violates the principle of the independence of public service broadcasting, as defined in Recommendation No. R (96) 10 of the Council of Europe Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting. The situation of "subordination" of a public service broadcaster to anyone is a violation of its independence.

Delete this paragraph.

Articles 57-63

We are not going to analyse and comment on these articles in detail because we believe they should be completely rewritten. The system of TRM governance proposed in the draft Code is a cause for very serious concern for several major reasons:

1. It is designed to turn the CCA into the top governing body of TRM, with very extensive powers to interfere into practically every aspect of TRM's activity, and thus to subordinate TRM to direct political control of Parliament;

2. It deprives TRM of editorial independence and institutional autonomy;

3. It undermines the status of the CCA as an independent regulator. A regulatory body should be independent not only of the government, as well as political and business interests, but also of the institutions it regulates. The CCA, as it is designed in the draft Code, cannot be describe as being independent of TRM: it would not only appoint but also employ the President and directors of TRM; and it would practically manage TRM, due to the executive powers and competencies the draft Code gives it;

4. A regulatory authority that is to oversee both public and commercial broadcasters will not be impartial in dealing with commercial broadcasters if it is so closely tied to the public broadcaster. It will not, for example, be credible in any matters to do with advertising, if its job is to accept and monitor the implementation of TRM's budget, which gives it the responsibility for the financial well-being of TRM.

All this directly contradicts standards formulated in Council of Europe documents (Recommendation No. R (96) 10 of the Council of Europe Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting and Recommendation Rec (2000) 23 of the Council of Europe Committee of Ministers on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector), as well as EU standards concerning broadcasting regulatory authorities. A system of governance which does not provide for a supervisory body in the structure of a public service broadcaster is not in line with "model PSB laws", developed both within the European Broadcasting Union and by Article 19.

According to Recommendation No. R (96) 10 of the CoE Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting, such supervisory bodies should:

- be appointed in an open and pluralistic manner;
- represent collectively the interests of society in general;
- not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;
- not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions.

The draft Code should provide for the existence of such a supervisory body whose tasks, as described in the Model PSB law of Article 19 would be to have "overall responsibility for the determination of internal policy, for ensuring compliance with all policies (…), for ensuring that SBC meets the highest standards of probity and value for money, for appointment of senior staff, including the Managing Director (President), and for setting the overall strategy of the public service broadcaster".

Day-to-day management of TRM would be in the hands of the President who could be appointed by means of a public contest. He or she could only be dismissed by a two-thirds majority of the Supervisory Council. The President could create a collective management body, potentially structured in the same way as the Executive Board provided for by the draft Code.

In brief, the system being proposed is as follows:

Body	Manner of appointment	Main Functions
CCA	As now	Oversees program performance of TRM, especially fulfilment of PSB remit; gives an opinion on the financial plan and Statement of Program Policy (see Article 64)
Supervisory Council of TRM	Three options: 1. Authorised nominators from among civil society, creative and professional organisations 2. Open public nominations, selected by CCA, appointed by Parliament (see Appendix 2 for a possible model) 3. As proposed in Article 19 Model PSB Law (see Appendix 3)	1. Appoints President and, on his/her motion, radio and TV directors (Vice-Presidents) 2. Adopts Statute 3. Approves annual budget and financial report 4. Approves annual Statement of Program Policy 5. Assesses, on an annual basis, performance of TRM and top management 6. Approves sale and encumbrance of property, credits and loans
President (employee of TRM, hired by Supervisory Council)	Appointed for a fixed term by Supervisory Council (two-thirds majority)	Runs TRM, serves as “Editor in Chief”
Executive Board, chaired by the Presi-dent	Composed of President, directors, heads of main units	Assists the President in day-to-day management

Naturally, the Supervisory Council should have no power to interfere in any way with programming, its content and production, except for approving the annual Statement of Program Policy.

Article 64. Task Notebook

As described in Article 64, the “Task Notebook” appears to serve as a basis for negotiations with Parliament on the level of the budgetary allocation (see Article 66.3(a). It is, in reality, two documents in one: financial plan and program strategy.

Article 49 imposes a requirement of transparency on the Council. Article 66 paragraph 5 introduces a similar requirement for TRM, at least as far as financial matters go. Article 64 could provide a basis for more developed transparency and accountability, needed to ensure the legitimacy and public support for the activities of the public service broadcaster.

It is therefore proposed that the article be rewritten to require TRM to prepare two documents for submission to Parliament and the general public: a financial plan and a Statement of Program Policy.

In outline, the two documents could include, *inter alia*, the following:

Financial Plan	**Statement of Program Policy (for TRM and separately for each program service)**
- Budget as provided for in Article 66 - list of transmitters used by the radio broadcaster (rented and owned), - projects of capital construction, reconstruction, technical equipment and re-equipment, - projects of building and developing territorial structures and the networks of reporters according to the legislative acts of the Republic of Moldova, the present Code, and international agreements, - principles and necessities of radio broadcaster's employees remuneration, - other	- list of radio and TV channels of the radio broadcaster, their daily and total broadcast, - broadcast time for the programs broadcast in the state language and in the languages of national minorities as established by the present Code, - broadcast time reserved for news, - broadcast time reserved for feature films and documentary films, for shows produced and purchased by the radio broadcaster, - broadcast time of own production throughout the year, - projects of programs exchange with foreign countries, - broadcasting time dedicated to the programs meant for foreign countries, - other

Article 64 could specify a procedure whereby the two documents are developed by the Executive Board, approved by the Supervisory Council and submitted to Parliament with an opinion of the CCA, so that Parliament could have the expert view of the regulatory authority on the proposed activities and finances of TRM when it decides on the level of budgetary allocation.

TRM should also have the obligation to publish annual reports for the general public on the execution of the financial plan and the Statement of Program Policy.

Article 65. Property of the Company

The article needs change because it ascribes to the CCA the role that should be performed by the TRM Supervisory Council.

Appendix to Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting states in part:

"The legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy, especially in areas such as:

- the organisation of the activities of the service;
- recruitment, employment and staff management within the service;

- the purchase, hire, sale and use of goods and services;
- the management of financial resources;
- the preparation and execution of the budget”.

In its present form, article 65 departs from these principles.

Paragraph 4 – Replace “Council” with “Supervisory Council”.

Article 66. Budget of the Company

As noted above, the budget should be prepared by the Executive Board and approved by the Supervisory Council. The accounts should be audited by an external auditor selected by the Supervisory Council.

CHAPTER VIII. PRIVATE RADIO BROADCASTERS

Article 67. Establishment and Activity of Public Radio Broadcasters

No comment.

CHAPTER IX. FINAL AND TRANSITORY PROVISIONS

Article 68. Coming into Effect of the Code and Abrogation of Certain Acts

No comment.

Article 69 Compliance with the Provisions of the Present Code

(4) The preparation of the National Plan for radio-electric frequencies should not be rushed. Care must be taken to ensure that there is enough time for proper consultation and consideration of the needs of broadcasting.

(6) The provisions for the advertisement of the President and Directors of TRM should be reviewed in line with our recommendations for setting up an independent Supervisory Council; it is they, not the CCA, who should be responsible for advertising and appointing the senior executive of TRM.

* * *

APPENDIX 1

Selected definitions of PSB mission

The Polish Broadcasting Act defines this mission in Article 21 (1) as follows: "Public radio and television shall carry out their public mission by providing, on terms laid down in this Act, the entire society and its individual groups with diversified program services and other services in the area of information, journalism, culture, entertainment, education and sports which shall be pluralistic, impartial, well balanced, independent and innovative, marked by high quality and integrity of broadcast".

The French Freedom of Communication Act No. 86-1067 of 30 September 1986 (as amended) has a similar definition in Article 43-11:

Public service broadcasters "shall offer the public, taken as a whole, a group of programs and services which are characterised by their diversity and their pluralism, their requirement of quality and innovation, respect for the rights of the person and of constitutionally defined democratic principles.

They shall present a diversified offer of programs in analogue and digital modes in the areas of information, culture, knowledge, entertainment and sport. They favour democratic debate, exchanges between different parts of the population as well as integration into society and citizenship. They shall promote the French language and highlight cultural and linguistic heritage in its regional and local diversity. They shall contribute to the development and broadcasting of intellectual and artistic creation and of civic, economic, social, scientific and technical knowledge as well as to audio-visual and media education.

Using adapted devices, they shall favour access to their broadcasted programs by persons who are deaf and hard of hearing.

They shall guarantee the integrity, independence and pluralism of information as well as the pluralist expression of currents of thought and opinion in respect for the principle of the equality of treatment and the recommendations of the Conseil supérieur de l'audiovisuel".

The institutions of the public audio-visual communication sector, with respect to the performance of their assignment, shall contribute to the external audio-visual action, the influence of the French speaking world and the broadcasting of the French language and culture throughout the world. They shall endeavour to develop new services that may enrich or complete their program offer as well as the new technologies of production and broadcasting of audio-visual communication programs and services".

* * *

APPENDIX 2

The following is the procedure for appointing members of the Board of Radio Television of Kosovo, included in a draft law on RTK, developed with the assistance of Council of Europe experts. It cannot be applied directly to TRM, but could be adapted for use in the draft Code.

LAW ON RADIO TELEVISION OF KOSOVO

BOARD OF RTK

Article 22
Composition of the Board

1. The RTK Board shall be composed of public personalities with professional qualifications in various areas such as: culture, art, cinematography, journalism, law, business and financial management, public relations, international relations, academia, media and engineering.

2. The members of the Board shall be appointed and shall act in their personal capacity and shall not represent any other interest external to RTK other than the public interest. They shall not request or accept any instruction related to the activities of the Board from any interest external to RTK.

Article 23
Selection of Members of the Board

1. The governing body of RTK shall be the RTK Board, composed of 9 members, who are appointed by the Assembly of Kosovo.

2. Candidates for the RTK Board shall be nominated according to the following procedures:

    a. The IMC shall issue a public invitation for nominations to fill any vacancy on the RTK Board.

    b. In consultation with the current RTK Board, the IMC shall define and publicly announce the criteria for selection of candidates for each vacancy.

    c. The IMC Council shall convene an ad-hoc commission composed of three of its members and three members of the current RTK Board as well as the President of the Chamber of Lawyers who should also head this committee, to determine by a simple majority the two most qualified nominees for each vacancy. It shall be the goal of this process to select a group of candidates with varied professional backgrounds and personal integrity that are required to govern a public broadcaster.

    d. This commission shall submit its candidates to the Assembly. A special ad-hoc commission of the Assembly composed of one representative of each political

entity seated in the Assembly shall by simple majority select one of the two candidates for each vacancy, whose appointment to the Board shall be ratified by a pro-forma act of the whole Assembly.

3. Two members of the RTK Board shall be from non-Albanian communities, and at least two members shall be women. At least two members of the Board shall have professional qualifications in the area of financial and business management.

4. One-third of RTK Board members shall be appointed for a two-year mandate, one third to three-year mandate and one-third to four year mandate, with the appointees in each group to be determined by a public lottery. Board members may be reappointed for one additional mandate.

5. The mandate of the Chair and Vice Chair of the Board shall be one year with the possibility of re-election by a simple majority of the members of the Board.

* * *

APPENDIX 3

Method of appointing the Board of Directors as described in the Model PSB law of Article 19

Board of Directors

5. (1) SBC shall be governed by a Board of Directors (hereinafter called "the Board") with overall responsibility for SBCs accountability (…)
(2) The Board shall be composed of nine (9) members who shall have some relevant expertise, by virtue of their education or experience, including in the fields of broadcasting, policy, law, technology, journalism and/or business.

Appointment of the Board

6. (1) Members of the Board shall be appointed by the [insert name of (lower chamber of) parliament], in accordance with the following: -
(a) the process shall be open and transparent;
(b) only candidates nominated by civil society and professional organisations shall be considered for appointment;
(c) a shortlist of candidates shall be published in advance and the public shall be given an opportunity to make representations concerning these candidates;
(d) a candidate shall be appointed only if he or she receives two-thirds of the votes cast;
(e) membership of the Board as a whole shall, to the extent that this is reasonably possible, represent a broad cross-section of [insert name of State] society;
(2) No one shall be appointed to the Board if he or she: -
(a) is employed in the civil service or any other branch of government;
(b) holds an official office in, or is an employee of, a political party;
(c) holds an elected position at any level of government;
(d) holds a position in, receives payment from or has, directly or indirectly, significant financial interests in broadcasting or telecommunications; or
(e) has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned, unless five years have passed since the sentence was discharged;
provided that individuals who have been short-listed pursuant to sub-section (1)(c) shall be given an adequate opportunity to take any necessary steps to remove a barrier to their appointment under this sub-section.

Independence of Members

7. (1) All members of the Board shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote the Guiding Principles set out in section 4.
(2) Board members shall neither seek nor accept instruction in the performance of their duties from any authority, except as provided by law.
(3) Board members shall act at all times in the overall public interest and shall not use their appointment to advance their personal interests, or the personal interests of any other party or entity.