Comment

on the

Audiovisual Code of the Republic of Moldova

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1. Introduction

On 27 July 2006, the Parliament of Moldova passed a new Audiovisual Code[1] (the Code), a wide-ranging piece of legislation designed to replace the existing laws on both private[2] and public broadcasting[3] and to bring the country's legal framework for broadcasting into line with international standards.

ARTICLE 19 understands that the 'Coordinating Council of the Audiovisual' (the Coordinating Council), the body charged under the Code with regulating the private broadcasting sector, is currently undertaking a review of the Code with a view to proposing amendments to Parliament. This Comment aims to contribute to the review process by identifying discrepancies between the Code and international standards and best practice in the area of freedom of expression. It builds on an earlier, comprehensive analysis of the draft Code prepared by us in April 2006.[4]

While this Comment focuses mainly on outstanding problems, ARTICLE 19 broadly welcomed the adoption of the Audiovisual Code, the final text of which incorporated many improvements suggested by domestic NGOs,[5] the Council of Europe[6] and the OSCE,[7] as well as by ARTICLE 19. All-in-all, the Code provides a strong legal basis for the development of an independent and pluralistic broadcasting landscape in Moldova. At the same time, we stress that achievement of Code's aims is not simply a question of good legal drafting but also requires sustained political will to implement it in good faith. We are troubled that the Code appears to have been used as a justification for certain measures which are at odds with its spirit, such as the disorderly privatisation of the local Antena C and Euro TV channels in the run-up to the May 2007 local elections.

This Comment is based on general international standards regarding freedom of expression, as elaborated by the European Court of Human Rights, other human rights courts and constitutional tribunals around the world, and as set out in recommendations by the Council of Europe's Committee of Ministers. The relevant standards are summarised in two ARTICLE 19 publications, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (the ARTICLE 19 Principles)[8] and *A Model Public Service*

[1] Audiovisual Code of the Republic of Moldova (*Codul Audiovizualului al Republicii Moldova*), Law No. 260-XVI of 27 July 2006, published in *Monitorul Oficial* No. 131, in force on 18 August 2006. This Comment relies on an unofficial translation provided by the Independent Journalism Center. ARTICLE 19 takes no responsibility for comments based on erroneous or misleading translation.
[2] Audiovisual Law, Law No. 603-XIII of 3 October 1995.
[3] Law Regarding the Public National Broadcasting Company 'TeleRadio Moldova', Law No.1320-XV of 26 July 2002.
[4] Available online in English at http://www.article19.org/pdfs/analysis/moldova-audiovisual-code.pdf and in Moldovan at http://www.article19.org/pdfs/analysis/moldova-audiovisual-code-mold-.pdf.
[5] See, for example, 'Pleadings to adjust the national broadcasting legislation to European standards - Report of the representatives of civil society', at http://www.ipp.md/files/Publicatii/2006/Pledoarii_pt_imbunatatirea_legislatiei_audiovizualului_engleza.doc.
[6] Analysis and comments on the draft audiovisual Code of the Republic of Moldova by Eve Salomon and Karol Jakubowicz, ATCM(2006)004, 15 May 2006, at http://merlin.obs.coe.int/redirect.php?id=10332.
[7] Comments on the draft Audiovisual Code of the Republic of Moldova by Dr. Katrin Nyman-Metcalf, OSCE Expert, 7 April 2006, at http://www.osce.org/item/18723.html, and additional comments of 10 May 2006 at http://www.osce.org/item/19078.html.
[8] London, April 2002. Available online at http://www.article19.org/pdfs/standards/accessairwaves.pdf.

Broadcasting Law,[9] which translates the ARTICLE 19 Principles into legal form as they relate to public service broadcasting.

A summary of recommendations is provided at the end of this Comment.

The Code is divided into nine Chapters. Chapter I sets out a number of definitions and delineates the scope of the Code. Chapter II is entitled "Audiovisual Communication Principles" but in fact contains a mixture of general principles and specific rules on the content of broadcasts. Chapter III contains further specific rules on advertising, teleshopping and sponsorship. Chapters IV-VI and VIII cover private broadcasting, and include provisions on the procedure for licensing private broadcasters, on sanctions for non-compliance with the Code, and on the establishment of the Coordinating Council. Moldova's public service broadcaster, Teleradio Moldova, is regulated by Chapter VII. Chapter IX sets out a number of final and transitory provisions.

This Comment follows the same order.

2. Scope of the Code

Overview

The rules on the functional scope of the Code – in other words, on which activities are covered by it – are found in the first two articles. Article 1 establishes that the Code will apply to "broadcasting and/or re-broadcasting by means of TV and radio", with the exception of "audiovisual communication by means of closed-circuit TV and radio which is not intended for mass reception, as well as the activity of the radio-amateurs." The term 'broadcasting' is defined in Article 2(a) as "initial coded or non-coded broadcasting through radio-electric waves, cable or satellite, of program services intended for the public".

Analysis

These definitions are clear and adequate, but confusion arises as a result of the use of another term to denote broadcasting activities, 'audiovisual communication'. This concept is defined in Article 2(h) as "offering different program services to the public by using terrestrial frequencies and other technical means (broadcastings, satellites, cable, *Internet, etc.*)" [emphasis added]. As noted above, Chapter II is entitled "Audiovisual Communication Principles"; it therefore would appear that this part of the Code applies not only to terrestrial, cable and satellite broadcasting, but also to webcasting and other new technologies for delivering streaming audio and video content.

We are not sure whether the term 'audiovisual communication' was specifically chosen to bring the Internet within the ambit of Chapter II; however, we stress that the Internet is a fundamentally distinct medium that calls for different regulatory treatment than broadcasting. For example, the rules found in Chapter II on political balance are appropriate to broadcasting, but not to the Internet. The media through which traditional broadcasts are delivered, such as the electromagnetic spectrum, are finite, meaning that the State must intervene in order to ensure that the available channels are used in a pluralistic way, allowing all political parties a voice. On the Internet, by contrast, anyone can in principle open a

[9] London, June 2005. Available online at http://www.article19.org/pdfs/standards/modelpsblaw.pdf.

website including webcasts, meaning that there is no need or justification for State regulation of balance and pluralism.

The Special Mandates on Freedom of Expression of the United Nations, the Organization of American States and the Organization for Security and Cooperation in Europe stated, in a Joint Declaration:

> No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting.[10]

We therefore recommend simply deleting the mention of the Internet from Article 2(h).

3. Principles and Rules Applicable to All Broadcasters

This section considers the principles and rules contained in Chapter II, which applies to all broadcasters, whether private or public.

3.1. Content restrictions

Overview

Articles 6-10 set out a number of rules on the content of broadcasts, dealing with such matters as hate speech, protection of minors and political balance. For example, Article 6 prohibits the broadcasting of programmes which incite to "hatred on grounds of race, religion, nationality, or gender," and requires broadcasters to take scheduling or technical measures to prevent minors from watching programmes which could harm their development. Article 7 requires all broadcasters to strive for pluralism in their programme services and provide "equitable, balanced and impartial" coverage of elections. This provision also requires news reports to be accurate, not to twist reality and to draw on several sources where they concern conflict situations. Article 10 makes it clear that viewers and listeners have certain rights in their relationship with broadcasters, such as a right to "comprehensive, objective and accurate information".

Analysis

In principle, many of the restrictions found in Chapter II pursue legitimate aims. We are concerned, however, at the broad and vague language used in relation to some of them, including such terms as "equitable", "balanced", "impartial", "comprehensive", "objective" and "accurate". These are certainly worthy goals, but further clarification is required so that broadcasters understand what is expected from them, and so that the provisions of Chapter II are not abused for political ends. For example, the requirements to provide "complete, objective, and accurate information" and to ensure the "correctness and impartiality of news programmes" could easily be abused since these are vague terms, yet many countries impose some obligation on broadcasters to make an effort to disseminate accurate information.

The Code would become long and unwieldy if Chapter II contained precise definitions of all the terms it used. Instead, we recommend following the best practice of other countries, which

[10] *Joint Declaration of 21 December 2005*, available at http://www.article19.org/pdfs/standards/three-mandates-dec-2005.pdf. See also the *Declaration on freedom of communication on the Internet* issued by the Committee of Minister of the Council of Europe, 28 May 2003.

is to clarify these matters in a separate, binding code of conduct. By way of example, in the United Kingdom, Section 320 of the Communications Act 2003[11] imposes similar obligations on broadcasters as Chapter II of Moldova's Audiovisual Code. Amongst others, it requires broadcasters to maintain "due impartiality". However, this term is elaborated clearly in a detailed Broadcasting Code (see Box).[12]

Meaning of "due impartiality" in the United Kingdom:

"Due" is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. "Due" means adequate or appropriate to the subject and nature of the programme. So "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.

We note that Article 40(f) of the Code indeed foresees the adoption of a Code of Conduct by the Coordinating Council of the Audiovisual. Article 68(7) further states that the Code of Conduct must be adopted "within a reasonable timeframe" and in consultation with broadcasters and other stakeholders. It is not clear, however, what topics specifically should be dealt with in the Code. It would be useful to introduce a provision into the Audiovisual Code which elaborates on the content of the Code of Conduct, and specifically required that the terms and concepts found in Chapter II be clarified by the Code.

We further note that Article 10(3) states that "the court shall act in order to protect the rights of program consumers if the holder of such rights notifies about any violation." In most countries, enforcement of the broadcasting law, as well as the code of conduct if there is one, is in first instance the responsibility of the broadcast regulator; as will be discussed below in section 4.2, the Coordinating Council for the Audiovisual is indeed competent to receive complaints from individuals. This has several advantages compared to enforcement by the courts: the Council possesses specific expertise on broadcasting, will often be able to handle a case faster, and may be more accessible to ordinary people, if they are able to submit complaints to it without the help of a legal representative. We recommend deleting Article 10(3).

3.2. Language and local content requirements

Overview

Article 11 sets out certain rules relating to the language of broadcasts and imposes requirements on the level of own, local and European production carried by broadcasters.

According to paragraph 1, by 1 January 2010 at least 70% of all frequencies should be in the hands of stations broadcasting in the official language. Paragraph 9 states that broadcasters serving minority language regions must carry at least 20% content broadcast in the official language.

[11] Available online at http://www.opsi.gov.uk/acts/acts2003/30021--i.htm#320.
[12] The full text of the Broadcasting Code is available at http://www.ofcom.org.uk/tv/ifi/codes/bcode/.

Also from 1 January 2010, at least 80% of the programmes broadcast must be own, local or European production, and at least half of this share must be broadcast during prime viewing hours (Article 11(2)). Cultural and music programmes broadcast during prime time must "include local production holding a share of at least 60% in the weekly volume reserved for broadcasting the relevant genre of audiovisual production" (Article 11(4)). Prime time is defined for TV as the periods between 06:00-09:00 and 19:00-23.00; and for radio as the periods between 06:00-13:00 and 19:00-20:00 (Article 2(u)). Article 3(7) moreover states that from the time of Moldova's eventual accession to the European Union, broadcasters must devote a minimum of 51% of their broadcasting time to European works, with the exception of the time allocated to news programs, sports events, entertainment shows, advertising, teletext services and teleshopping.

Finally, Article 11(3) imposes a requirement on broadcasters to ensure that "the own and national production of news and analysis aired by the broadcaster will be not less than 65% in the official language" by 1 January 2007, rising to 80% by 2010.

Analysis

In general, we welcome the imposition of local content requirements, which should stimulate the audiovisual industry of Moldova and ensure that TV and radio programming becomes more relevant to viewers and listeners. We have concerns on the drafting of these provisions, however, as well as on the imposition of language requirements.

First, these provisions are often confusing, at least in translation. It is not clear, for example, whether Article 11(4) means that 60% of all cultural and music programmes broadcast during prime time must be local production or, rather, that of the total amount of such programmes broadcast during a week, 60% must be local production *and* concentrated in the prime time hours. We are similarly confused as to whether Article 11(3) means that 65% of all news and analysis programmes broadcast must be both own production and in the official language, or merely that 65% of own production of such programmes must be in the official language.

We note that it is impossible for a TV station broadcasting more than 17½ hours per day to comply with Article 11(2). This provision, as noted, requires 80% of content to be own, local or European production by 2010, of which half (that is 40%) must be broadcast during prime time. This means that a 24-hour station would be required to broadcast 0.4 * 24 = 9.6 hours of such content during prime time, whereas there are only 7 prime time hours in a day. Article 11(2) also appears to deprive Article 3(7) of most of its relevance. Moldovan audiovisual production qualifies as "European works", so that in fact by 2010 broadcasters will be required to carry 80% European works, far more than the 51% foreseen by Article 3(7) in the event that Moldova joins the European Union. The provision would be significant only if Moldova jointed the EU prior to January 2010. However, EU membership is not particularly relevant in this context since Moldova has ratified the Council of Europe's *European Convention on Transfrontier Television* and is already bound to ensure that at least 50% of broadcasts are European works.

Second, we do not believe that the restrictions on the use of non-official languages in the Code are compatible with the right to freedom of expression. The choice in which language to broadcast is an integral part of the right to freedom of expression, protected under Articles 19 and 27 of the *International Covenant on Civil and Political Rights*, to which Moldova is a party. Read together, Articles 19 and 27 mean that a State may not restrict the use of languages other than the State language, except to serve overriding public interests. The UN

Human Rights Committee, the body of experts set up to supervise implementation of the ICCPR, has said:

> A State may choose one or more official languages, but may not exclude, outside the spheres of public life the freedom to express oneself in the language of one's choice.[13]

In a case interpreting a restriction similar to the one stated in Article 11(1), the Latvian Constitutional Court held that given the current widespread use of non-State languages in the broadcast media, in particular Russian, a limitation on the use of these languages "cannot be regarded as socially needed in the democratic society."[14] The reasoning of the Latvian Constitutional Court relied heavily on Article 10 of the European Convention on Human Rights, which is substantively similar to Article 19 ICCPR.

The OSCE "Guidelines on the Use of Minority Languages in the Broadcast Media"[15] state:

> In regulating the use of language in the broadcast media, States may promote the use of selected languages. Measures to promote one or more language(s) should not restrict the use of other languages. States may not prohibit the use of any language in the broadcast media. Measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities.

As the OSCE Guidelines make clear, measures to promote knowledge of the official language are permissible, but should not take the form of a restriction on other languages. We are of the view that the requirement of 80% own and national news in the official language cannot be justified.

4. Private Broadcasting

In this section, we consider the provisions in the Code relating to private broadcasting, which cover three topics: the administration of licences (Chapter IV); control and sanctions (Chapter V); and the Coordinating Council of the Audiovisual (Chapter VI).

4.1. Administration of licences

Overview

The foundation for licence planning in Moldova is the 'Strategy for National Territorial Coverage with Audiovisual Programme Services', which pursuant to Article 35 of the Code is developed by the Coordinating Council. The Strategy is a document stipulating a division of the territory of Moldova into regions and localities for the purposes of broadcasting, and explaining how these will be covered with broadcasting services. The Strategy is adjusted annually and forwarded to the 'specialised central public authorities' which are responsible for administration of the electromagnetic spectrum.

According to Article 36, the specialised central public authorities develop a higher-level plan, called the 'National Plan for Territorial Radio-electric Frequency Distribution', which

[13] *Ballantyne and Others v. Canada*, 31 March 1993, Communication Nos. 359/1989 & 385/1989.
[14] *The Republic of Latvia – Constitutional Court*, Case No. 2003-12-01-06, Judgment of June 5, 2003. Available at: http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(03).htm.
[15] October 2003: Office of the High Commissioner on National Minorities.

allocates part of the spectrum for broadcasting use. This plan must contain at least 6 national frequencies reserved for radio and 5 national frequencies for television.

Broadcast licences for terrestrial broadcasting in Moldova are to be distributed by the Coordinating Council "on a contest basis" while licences for broadcasting through other means will be issued without contest (Articles 23(1) and (2)). The procedure and requirements for obtaining a licence must be published in the *Monitorul Oficial* and on the website of the Coordinating Council, and these are also the places where new contests must be announced (Articles 23(4) and (6)). During the contest period, the Coordinating Council is required to publish information about the proposals it has received (Article 23(7)).

The criteria for deciding between competing applications are listed in Article 23(3), and include whether the proposal is in line with the objectives of the national frequency plan, whether granting the licence will promote pluralism and prevent concentration of ownership, whether the proposal is financially viable, and whether the applicant proposes to offer own, local and European productions. The Coordinating Council takes its decision no later than 20 days after the deadline for applications, after an "objective and impartial examination of applicant proposals" against the applicable criteria (Articles 23(8) and (9)). The Council's decisions are appealable in court (Article 23(10)).

Licences are granted for between 6 and 7 years, depending on the type of broadcaster (Article 23(5)). At the end of their term, licences are renewed for a similar period at the request of the licence holder, unless the broadcaster failed to comply with the licence's terms (Article 24). Licences can only be renewed twice and can be transferred only with the consent of the Coordinating Council (Articles 24(3) and 26).

Article 25 sets out the conditions that a licence will contain. These are mostly straightforward, such as the name and type of the programme service, the licence fee, the assigned frequency, the duration of the licence and the obligation of the broadcaster to comply with applicable laws and the Code of Conduct. According to Article 25(1)(n), the licence will also require broadcasters "to respect program consumers' rights to complete, objective, and accurate information, to free expression, to free opinion formation, ensuring the correctness and impartiality of news programmes." Paragraph 3 of the same article permits the Coordinating Council to unilaterally amend the broadcasting license "with the purpose to adjust the broadcaster's activity to the new provisions included in the legislation in force".

Within six months of obtaining a licence from the Council, prospective broadcasters must apply for a technical licence, which is granted within five days and is valid for the term of the broadcast licence. The application is made to the Coordinating Council which forwards it to the public body charged with administering the spectrum. The 'specialised central public authorities' develop the procedure for granting technical licences and determine the licence fee and tariff for use of the frequency (Article 31). These authorities may unilaterally change a licence holder's frequency "for technical reasons or because of amending the National Plan for Territorial Radio-electric Frequency Distribution" (Article 33).

Broadcasters who wish to retransmit another station's service require the consent of that station and authorisation from the Coordination Council (Article 28), and, in this case, the broadcaster is liable for the retransmitted content (Article 29). These rules do not apply to material retransmitted from a broadcaster falling under the legislation of an EU member State or another State party to the European Convention on Transfrontier Television (Articles 29(2) and 30(2)).

Analysis

The provisions on the administration of licences were substantially improved in the final text of the Audiovisual Code, compared to the draft adopted by Parliament on first reading. Nevertheless, some concerns remain.

We welcome the authorities' intention, demonstrated in Articles 35 and 36, to allocate frequencies according to a planned process. These provisions could be improved, however, by stipulating that the process leading to the adoption of the Strategy and the Plan (insofar as it concerns audiovisual broadcasting) will be open and consultative, to ensure that the public can make its views known on how the spectrum should be used. Submissions received from the public should be made available for inspection by others through being published on the relevant body's website.

Moreover, we believe Articles 35 and 36 should state clearly that the Plan and the Strategy will share the available frequencies *equitably*, based on the public interest. The Code currently simply requires the Strategy to divide Moldova into regions and localities. In addition to requiring this to be equitable, the Strategy should also ensure the same between radio and television, and between public, commercial and community broadcasters (for more on the last category, see section 6 below).

The provisions concerning the organisation of licence competitions are well drafted, but we are concerned about the absence of any guarantee that such contests will actually be organised on a regular basis. To ensure that broadcasters are given a regular opportunity to apply for a licence, the Code should either stipulate a maximum interval between successive competitions or, preferably, allow licence applications to be made at the initiative of an interested broadcaster at any time, outside any tender procedure.

The criteria for deciding on licence applications are relevant and consistent with international best practice, although the technical capacity of the applicant to implement the proposal should be added as an additional factor to be taken into consideration. We also believe that Article 23(3)(b) should be split into two separate items: first, whether the proposed broadcasting service will contribute to a diverse broadcasting landscape, by providing programming that meets needs which are not yet adequately served by other licence holders; and second, whether granting the applicant a licence would lead to a danger of excessive concentration of ownership in the broadcasting sector. These are two separate criteria which are both important for the achievement of pluralism, and it would be better to make this clear by listing them in separate paragraphs.

As regards the licence conditions, the principle that licence holders are entitled to a presumption of licence renewal is positive, since it will encourage broadcasters to make long-term investments to improve their service. At the same time, we think Article 24(1) is too absolute, as it guarantees renewal of the licence for any broadcaster who complies with the applicable laws and the Code of Conduct, regardless of the quality of the service or its contribution to pluralism in the broadcasting sector. We recommend rephrasing this provision, to the effect that the licence will ordinarily be renewed if the broadcaster has complied with its obligations, unless there is a clear public interest in organising a new competition for the licence.

We further wonder why licences cannot be renewed more than twice. While it is certainly justifiable to thoroughly review the performance of a broadcaster after a period of 18 or 21

years, if the service is found to be functioning well, there would seem to be no reason to close it down automatically. Furthermore, we do not believe that content obligations, discussed above, should be directly included in a licence agreement. It is sufficient for the licence to include a requirement to respect the Code of Conduct, as is currently foreseen by Article 25(k).

We note that Article 23(6) states that announcements of licence competitions are supposed to "state the fee for the broadcasting licence", but that the Code fails to provide any clarification regarding the level of the fee. Similarly, Article 31 provides that the 'specialised central public authorities' will decide on the fee for the technical license, as well as on "costs for frequency usage". We recommend, first, that a fee schedule should be set and published by the Coordinating Council, after a public consultation. In this way, the fees will not be set at an arbitrary level and will take account of what broadcasters are able to pay without compromising on the quality of their service. Second, the requirement to pay three different charges – a broadcast licence fee, a technical licence fee and a frequency usage charge – seems unnecessarily complicated. Instead, we recommend that a single, combined fee be established, and that a formula be worked out for sharing this fee between the Coordinating Council and the specialised central public authorities.

In a similar vein, the requirement for applicants who have obtained a broadcast licence to seek a further 'technical licence' appears to be an unnecessarily bureaucratic measure. We recognise that the final text of the Code has somewhat simplified the procedure by stipulating that the Coordinating Council will forward the request for the technical licence to the specialised central public authorities. However, we believe that the licensing procedure should serve as an all-in-one procedure and the Council should ensure that licensees be automatically given a frequency, in coordination with the relevant authorities. We also recommend that the specialised central authorities should not be able to transfer a station to a different frequency unless there is an imperative need, and it is not possible to wait to do this until the end of the technical licence's term. Moreover, the decision should be justified in writing, announced a set number of weeks in advance and be subject to judicial review.

Finally, we question the need for a separate approval requirement for retransmission of broadcasts. Whether or not a broadcaster plans to transmit its own service or rely partly or entirely on retransmissions is an important factor to take into account at the time of the licence application. Once a licence is granted to an applicant, however, there should be no need to seek further approval for the manner of transmission of the service.

4.2. Control over broadcasters and sanctions

Overview

Article 37 of the Code grants the Coordinating Council responsibility to enforce the Code's provisions against broadcasters.

The Council can initiate an investigation against a broadcaster *ex officio*, upon the request of a public authority or after receiving a complaint from a directly affected natural or legal person (Article 37(3)). In case of a complaint, the Coordinating Council must "examine the submitted claims" within 15 days of receipt (Article 37(4)). As a result of such investigation, the Council can draw up a report, "take a decision on the administrative offence", apply a sanction or forward the case to law enforcement bodies in order to initiate a criminal

investigation (Article 38(4)). In case the Council finds that one of the offences listed in Article 38(2) has been committed, it may apply a sanction. Permitted sanctions are a public warning, the withdrawal of the right to broadcast advertisements for a certain period of time, a fine, temporary suspension of the broadcasting licence or permanent revocation (Article 38(1)). Sanctions must be applied in a graduated manner, starting with a warning. A fine may only be applied if the broadcaster fails to comply with the warning or if the offence is repeated (Article 38(4)). Both Article 27(2) and Article 38(5) define licence revocation as a sanction of last resort, to be applied if less harsh sanctions have consistently failed to rectify the problem.

Article 38 sets out a number of further procedural safeguards. Broadcasters must be informed of an investigation against them and be given an opportunity to make representations (Article 38(7). A decision to apply a sanction must be motivated and published on the Coordinating Council's website (Article 38(8)), and is open to appeal before a court "within the timeframe set up by law" (Articles 38(9) and (10)).

Analysis

The provisions on control and sanctions were very significantly improved before adoption of the Code. Only a few concerns remain.

First, the drafting of this Chapter is at times lacking in clarity and logical order. In Article 37(4), we are not sure whether the Coordinating Council's investigation must be *commenced* or *completed* within fifteen days of receipt of a complaint. Fifteen days would seem a very short period within which to complete the investigation, especially given that the broadcaster concerned has the right to present its case. However, we do believe that the Code should stipulate a term within which the investigation must be completed, in order to ensure that broadcasters are not subjected to long periods of uncertainty about their legal position. In Article 38(7), some more detail about the right of broadcasters to defend themselves would be helpful. For example, the Code should stipulate the minimum amount of time allowed to prepare a submission and whether the submission should be made in writing or orally.

Second, the power of the Coordinating Council to refer a case to the police for a criminal investigation could be justified in extreme situations; however, we believe the Code should be clear that such referrals are only to be made in specified, exceptional circumstances, such as direct incitement to a crime which has been condoned or endorsed by the broadcaster. Otherwise, referral to the police may just become a way of sidestepping the procedural safeguards which the Coordinating Council is required to observe. The Council should retain its primacy as enforcer of the Code.

4.3. Structure of the Coordinating Council

Overview

Chapter VII of the Code sets out provisions relating to the establishment of the Coordinating Council of the Audiovisual.

Article 39 establishes the Council as an autonomous public body, with all the attributes of public legal entities. The Council consists of 9 members. Nominations for membership can be proposed by "community associations, foundations, trade unions, employers' associations, and religious cults". These are assessed by the 'specialty parliamentary committee' and the Parliamentary Committee for Legal Issues, Appointments and Immunities, which both prepare a report and forward candidates' names to Parliament (Article 42(2)). Parliament

approves candidates by a vote of three-fifths, failing which the two committees must propose a new candidate within two weeks (Article 42(3)).

Candidates must possess a diploma of higher education and five years of relevant experience, be between 25 years and the legal age for retirement, speak the official language of Moldova and not have a criminal record (Article 42(4)). Council members serve in their personal capacity for staggered terms of 6 years, and may not be reappointed (Article 43). The members elect a President and a Deputy President amongst themselves by a simple majority of votes (Article 45).

Article 44 sets out a number of rules of incompatibility. Concurrently with their term, Council members may not hold any other public or private position, "except for scientific or didactical ones"; they may not be affiliated to political parties or structures; and neither members nor their relatives by blood or marriage may own, directly or indirectly, stakes in enterprises which would give rise to a conflict of interest, or use the title of member of the Coordinating Council for personal financial gain. Newly appointed Members have 30 days to resolve any existing incompatibilities, during which time they may not participate in votes (Article 44(4)). In all other cases, incompatibility will lead to dismissal (Article 44(5)). Article 43(5) sets out a number of further situations in which vacancies may arise: 1) resignation; 2) expiration of the term of holding the position; 3) conviction through a final court decision; 3) loss of citizenship of the Republic of Moldova; 4) mental or physical incapacity; 5) at reaching the legal retirement age.

Funding for the Council comes from the State budget of the Republic, licence fee income, "regulation expenses paid by the broadcasters in the amount of 1% of the annual turnover" and grants (Article 47(2)). The total level of funding "will cover the estimated costs of all activities, so that the Council can fully, effectively and efficiently exercise its attributions" (Article 47(1)). The Council submits a budget to Parliament annually which is discussed and approved in a plenary session (Article 47(5)). All funds received from sources other than the State budget must be paid into the so-called "Broadcasters' Support Fund", which is governed by a regulation adopted by the Council, and may not be used for the remuneration of members.

Members of the Council are paid a salary equivalent to 90% of the Council's President's salary (Article 46), although the level of the President's salary is not specified in the Code. Financial oversight of the Council is exercised by Parliament, to which the Council must submit an annual report of its activities (Articles 47(6) and 49).

Analysis

On the whole, we believe the structure of the Council is well designed and offers good guarantees of its independence from political, commercial or other unwarranted influence. A few minor improvements could further strengthen the body's autonomy and, in particular, its reflection of society as a whole.

With respect to the appointment procedure, it is positive that nominations are not made by political parties represented in Parliament, as was the case in earlier drafts, but by civil society organisations. The selection process should, however, be transparent; we recommend explicitly stipulating in the Code that sessions and documents of the two committees and the plenary Parliament which address appointments be open to the public, and that any interested party be make submission to the concerned committees. In addition, in order to ensure that civil society organisations are aware of their right to make nominations, any vacancy on the

Coordinating Council should be announced widely through advertising, as is the case with vacancies on the Supervisory Board of Teleradio Moldova (see Article 56(3)(a)).

The absence of any guarantee that the composition of the Council will broadly reflect the diversity of Moldovan society is a concern. The aim of this is not to appoint representatives of each of the various interest groups and/or minorities to the Council; this would merely serve to politicise it. Instead, the Council should broadly reflect the make-up of Moldovan society; it should not contain only people who are identified with one particular group or class. A provision could be added to the Code along the following lines:

> Membership of the Coordinating Council as a whole shall, to the extent that this is reasonably possible, represent a broad cross-section of Moldovan society.

In order to promote gender diversity, it may also be advisable to stipulate a minimum number of female members. We welcome the fact that this has already been done in relation to the Supervisory Board of Teleradio Moldova (see Article 56(3)(c)).

The grounds for removal of a member of the Council are mostly positive but still require some attention. It is not clear, in particular, what exactly "conviction through a final court decision" means; we suspect that it might refer to a conviction for a criminal offence. If the latter is indeed the case, the Code should stipulate that a member may be removed only upon conviction for a violent crime and/or a crime of dishonesty or theft, and not simply for a trivial offence. The emergence of one of the incompatibilities specified in Article 44 during a member's tenure should be an additional ground for removal.

Generally, we recommend that a decision to remove a member should require a vote by the same majority as is required for the appointment of a member, especially where removal is on a subjective ground, such as "mental or physical incapacities". The member concerned should be guaranteed an opportunity to appeal the decision in court according to ordinary procedures.

Financial independence of the Council and its members is an important aspect of its political independence. We welcome the fact that under the final text of the Code, the Council may receive income from a variety of sources and is not wholly dependent on an allocation from the general budget. The principle that the total level of funding should always be sufficient for the Council to function effectively is also important; however, the Code should make it clear that it is the responsibility of Parliament when it allocates funding to ensure that this principle is translated into reality. We also recommend that the Council's budget be determined every three or four years rather than annually, both to improve foreseeability and to reduce administrative burdens. The grant should be corrected for inflation every year.

We are concerned by the statement in Article 47(2) that broadcasters must apparently pay a 'regulation fee' of 1% of their turnover in addition to the licence fee, the technical licence fee and the 'frequency usage charge'. As discussed in section 4.1 above, in the interest of transparency and predictability, broadcasters should face one single charge which is set out in a clear schedule. This charge could well be composed of a combination of a flat-rate fee and a percentage of turnover, perhaps broken down into different elements, such as a charge for the technical licence, a charge for the broadcast licence, regulatory costs and so on. It is important, however, that a person or company considering participation in a licence competition be able to assess relatively easily what the overall cost of the licence will be.

The justification for the rule that income from non-State sources should not be used to remunerate Council members is not clear to us. Perhaps the purpose is to prevent the members

from feeling "indebted" to broadcasters. However, this result is only achieved by creating a risk that the members will instead feel indebted to the majority in Parliament. The solution is for members to have a legally set level of income, to be paid out of the overall budget of the Council, without distinction as to source. We recommend adding a provision to the Code which clarifies what the salary of the Director is, so that the 90% rule of Article 46 becomes meaningful.

Finally, the Code should set out in more detail what should be included in the annual report to Parliament. A list of items to be included might be as follows:

- a copy of the auditor's report;
- a statement of financial performance and of cash flows;
- a description of the activities of the Council during the previous year;
- information relating to licensing, complaints and research;
- a description of any sanctions applied by the Council and the decisions relating thereto;
- information relating to the Strategy for National Territorial Coverage with Audiovisual Programme Services;
- an analysis of the extent to which it has met its objectives of the previous year;
- its objectives for the coming year; and
- any recommendations of the Council in the area of broadcasting.

The annual report should be required to be published and disseminated to interested stakeholders.

5. The Public Service Broadcaster

Chapter VII of the Code deals with Teleradio Moldova, Moldova's public service broadcaster. The provisions in this section can be divided into two categories:

- Teleradio Moldova's governance structure (Articles 55-65); and
- Provisions pertaining to the institutional independence and budget of the company (Articles 50, 52 and 64).

5.1.1. The public service broadcaster's governance structure

Overview

The Code tasks a Supervisory Board composed of 9 members with management of the public service broadcaster. The Board members are appointed for a four-year term by a vote of three-fifths in Parliament. The appointments procedure commences with a public invitation for nominations by the Coordinating Council, which forwards two candidates for every vacant post to Parliament, ensuring that the pool of candidates contains individuals of personal integrity and with diverse professional backgrounds. Parliament must ensure that the board contains at least two women and two persons with a background in financial administration and business management (Article 56). Membership in the Board ends in the same way as membership in the Coordinating Council (see section 4.3 above), with the exception that

reaching the legal age of retirement does not end membership, while "consecutive and unjustified non-attendance of the Supervisory Board sittings" does.

Candidates for membership in the Board must possess certain qualifications, including being a citizen of Moldova, knowing the official language and having a higher education degree (Article 57(1)). A number of rules of incompatibility apply; amongst others, members of Parliament or a political party, government officials and Coordinating Council members are ineligible for appointment, as are employees of the company and persons with a financial stake in businesses which could give rise to a conflict of interest (Article 57(2)).

The Supervisory Board has a President and a Secretary who are elected by simple majority vote by the members, from amongst themselves (Article 56(8)). The Secretary's salary is set by the Board. The President and other members receive no salary, but do receive payments of 20% of the company president's monthly salary for each meeting attended. However, "the remuneration received by a member of the Supervisory Board during 30 days cannot exceed 50% of the salary of the president of the company" (Article 56(9)).

Article 58 makes the Board responsible for overall oversight over Teleradio Moldova. The Board's specific responsibilities include approving the company's statute and 'task book' (which includes its financial plan and broadcasting plan), monitoring its performance, appointing the company's director and the broadcast and television directors, meeting with viewer's panels and issuing annual reports.

Day-to-day management of the broadcaster is the responsibility of the company president, who enjoys "decisional independence" in the execution of his tasks. More concretely, his responsibilities include such things as managing the implementation of broadcasts, ensuring observance of the company's licence and the Board's instructions, drafting the company's statute and task book, managing the finances and staffing of the company (Article 60). The president is assisted in his work by the television and broadcast directors, who are responsible for the company's TV and radio arms respectively (Article 61).

The company president is recruited through an open competition by the Supervisory Board and appointed by a vote of two-thirds of the members. The applicable qualification requirements and rules of compatibility are similar to those for Board members (Article 60(6)-(14)). The television and broadcast directors are appointed "based on contest selection according to the conditions described in Art. 58", which sets out the appointment procedure for members of the Board.

Article 62 provides an outline of what the 'task book' should contain. The task book is essentially a planning tool, which in the words of the Code forms "the basis for ensuring the transparency and public support in the activities of the company, as well as for approving of the annual budget." It contains financial data, including the draft budget, a list of technical assets, salary policies and details of planned investments, and data on broadcasts, including a list of the radio and TV stations the broadcaster will operate, the hours and languages of their broadcasts, the amount of time reserved for different types of programmes and the amount of own and foreign production to be broadcast.

Analysis

The governance structure of Teleradio Moldova is perhaps the part of the Code which saw the greatest amount of improvement prior to its final adoption. It is well-designed and mostly in line with best practice of other countries.

We welcome the fact that the Supervisory Board is required to include a minimum number of women and diverse professional backgrounds. As with the Coordinating Council, however, we believe the Board should also be broadly reflective of Moldovan society as a whole (see section 4.3 above), an idea which clearly implies more than gender and professional balance.

The grounds for removal of a member of the Board suffer from the same problems as those applicable to the Council. The phrase "conviction through a final court decision" should be clarified, the emergence of one of the incompatibilities listed in Article 57(2) should be introduced as a grounds for removing a Board member, and decisions to remove member should require a vote by the same majority of votes in Parliament as is required for the appointment of a member, especially where removal is on a subjective ground, such as "mental or physical incapacities". The member concerned should be guaranteed an opportunity to appeal the decision in court according to ordinary procedures.

The division of labour between the Supervisory Board and the company president is based on a clear logic. We are concerned, however, that it is not explicitly clear who is responsible for developing editorial policy within the broadcaster. Article 52 of the Code, to be discussed below, guarantees the editorial independence of Teleradio Moldova as a whole, while Article 58(b) states that the Supervisory Board "approve[s] the task book of the company, which includes … the declaration of the editorial policy of the company". However, while Article 64 requires the task book to contain an outline of the types of services the broadcaster will offer, it does not require the inclusion of an actual editorial policy. The rules on editorial policy need to be clarified.

It is important that public service broadcasters have strong bonds with their public – after all, they exist in order to fulfil the public's right to know. Currently, accountability is envisaged in three ways: through the supervisory structure, the publication of annual reports by the Board and the Board's meetings with viewer panels. While these ideas are positive, there is no detail in the Code on what they actually entail. For example, the Code should specify what items must at a minimum be included in the annual reports. An example of such a provision is found in Article 23 of ARTICLE 19's *Model Public Service Broadcasting Law:*

> (1) The Board shall publish and distribute widely an Annual Report, along with externally audited accounts, for SBC. Each Annual Report shall include the following information: –
>
> (a) a summary of the externally audited accounts, along with an overview of income and expenditure for the previous year;
> (b) information on any company or enterprise that is wholly or partly owned, whether directly or indirectly, by SBC;
> (c) the budget for the following year;
> (d) information relating to finance and administration;
> (e) the objectives of SBC for the previous year, the extent to which they have been met and its objectives for the upcoming year;
> (f) editorial policy of SBC;
> (g) a description of the activities undertaken by SBC during the previous year;
> (h) the Programme Schedule and any planned changes to it;
> (i) a list of programmes broadcast by SBC that were prepared by independent producers, including the names of the producers or production companies responsible for each independent production;
> (j) recommendations concerning public broadcasting; and
> (k) information on complaints by viewers.
>
> (2) The Board shall formally place the Annual Report and externally audited accounts before the [insert name of (lower chamber of) Parliament] for their consideration.

We also believe Teleradio Moldova should be required to establish an internal complaints procedure, through which viewers can write to the Board about alleged breaches of the company's editorial policy. Such a complaints procedure is a useful complement to the possibility of complaining to the Coordinating Council, since the Council will deal only with breaches of Moldovan law and the Code of Conduct, not with complaints that a certain programme did not meet the higher standards of quality or integrity expected from a public service broadcaster. Other means could also be employed to garner audience feedback. For example, a schedule of monthly radio and television programmes could be dedicated to discussing audience feedback. Together, these measures would strengthen the ties between Teleradio Moldova and the public, and, importantly, give the public a real sense that the Teleradio Moldova is 'its' public service broadcaster.

5.1.2. Independence and funding

Overview

Article 50 establishes Teleradio Moldova as "an editorially independent public broadcasting service which is also independent in its production activity, institutionally autonomous, set up based on public financial capital". The meaning of editorial independence is clarified by Article 52, which states that "public authorities, parties, commercial, economic organisations, social-political bodies, unions or other types of institutions are not allowed to interfere" with the company's editorial decisions, and tasks the management with adopting an editorial policy and also with ensuring that there is editorial freedom within the broadcaster itself.

Article 64 sets out a broad set of rules concerning Teleradio Moldova's budget. It specifies that the broadcaster will have its own budget and will rely on six sources of income: an allocation from the State budget, in accordance with the task book; donations and sponsorships; proceeds from the sale of the right to use and transmit the broadcaster's property; revenues from public events; revenues from advertising, and any other sources of income not inconsistent with the Code or any other law. The budget is drawn up by the Supervisory Board and presented to Parliament. The broadcaster must annually prepare a report for Parliament along with its "report on budget execution" and the report must be published. The broadcaster is also subject to periodic auditing.

Analysis

The adequate funding of public service broadcasters is crucial to their functioning as well as to their independence. A steady supply of funding, with no political strings attached, goes a long way to guaranteeing maintenance of the public service broadcaster's independence. Articles 17-19 of Recommendation (1996) 10 of the Council of Europe note that funding for public service broadcasters should be appropriate to their tasks, and be secure and transparent.[16] Funding arrangements should not render public service broadcasters susceptible to interference, for example with their editorial independence or institutional autonomy. In some European countries, this has even been recognised as a constitutional principle.[17]

The Code envisages a direct public subsidy as Teleradio Moldova's principal source of income. While direct State funding of public service broadcasting has some advantages – it is

[16] Recommendation No. R(96)10 of the Committee of Ministers of the Council of Europe to member states on the guarantee of the independence of public service broadcasting, adopted 11 September 1996. See Guideline V.

[17] The Italian Constitutional Court, for example, has held that the constitutional guarantee of freedom of expression obliges the government to provide sufficient resources to the public broadcaster to enable it to discharge its functions: Decision 826/1998 [1998] Guir. cost. 3893.

flexible, relatively simple for the public service broadcaster in terms of administration, and protects the company from commercial pressure – there are some important risks as well. Most importantly, direct State funding raises the spectre of political interference. Funding can easily be used as a lever to influence content or editorial direction – particularly when funding has to be regularly renegotiated. These drawbacks are experienced by public service broadcasters even in established democracies, such as the Netherlands.

The Council of Ministers of the Council of Europe has also recognised this danger and recommended the following as guiding principles for public service broadcasters that are wholly or in part State funded:

> – payment of the contribution … should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning;
> – the use of the contribution … by the public service broadcasting organisation should respect the principle of independence and autonomy mentioned in guideline No. 1;
> – where the contribution … has to be shared among several public service broadcasting organisations, this should be done in a way which satisfies in an equitable manner the needs of each organisation.

In line with these principles, the Code should be amended to guarantee stable funding. At a minimum, it should allow for longer-term planning on the part of Teleradio Moldova with funding cycles that are longer than one year. Rather than the current annual budgets, we recommend reviews of the level of funding every 3 to 5 years, with a built-in annual rise to correct inflation.

Given the importance of securing sufficient funding, we also recommend that consideration be given to exploring additional funding mechanisms. Specifically, mechanisms might be considered whereby public service broadcasting is paid partly through a contribution levied on other broadcasters or on some other service provider, such as telephones. The advantage of this is that it allows for a stable source of funding that can grow together with income of commercial broadcasters or the overall market.

We note that Teleradio Moldova may now rely on advertising as a source of income. On the positive side, this may help to improve the broadcaster's financial independence; but it also carries a number of risks. More time for advertising means less time for quality programmes, and if advertising becomes a dominant source of income, the company may start to base its programming choices on revenue generation rather than the public interest. Moreover, Teleradio Moldova may draw advertising away from private broadcasters, harming their viability or endangering their quality. To counter these risks, we recommend including certain rules about the total amount of time that may be devoted to advertising and the total percentage of revenue which may be generated from this source. Article 21 of ARTICLE 19's *Model Public Service Broadcasting Law* states:

> (1) SBC may carry advertisements, provided that it shall not: –
>
> (a) broadcast advertisements which exceed 7½% of the total broadcast time during any given day or 10% of any given hour or programme;
> (b) obtain more than 25% of its total revenues from advertising and other commercial activities; or
> (c) rely on the Public Broadcasting Fee or any other public financing to directly subsidise or unfairly promote its advertising.

6. Community Broadcasting

It is increasingly being recognised in international law that the duty to promote media pluralism includes a duty to promote a three-tier broadcasting system, consisting not only of private and public service broadcasters, but also of community broadcasters.[18] By 'community broadcasting' we mean initiatives to set up broadcasters, typically radio stations, on a not-for-profit basis specifically to serve the interests of their community. This kind of broadcasting makes an important contribution to pluralism on the airwaves; it can provide access to people who would otherwise likely not find themselves represented by other broadcasters and can be truly independent of political and commercial interests. In many countries, community broadcasters benefit from lower broadcasting fees and from reserved frequencies.

We believe community broadcasting could fulfil a particularly useful function in Moldova, given the large number of ethnic and linguistic communities to which the country is home. The public service broadcaster will have to divide its time between these groups, while private broadcasters will have little commercial incentive to make programmes of interest to smaller communities. Community broadcasting could ensure that small communities have access to media that are truly their own.

We note that by failing to make any provision for community broadcasting, the Audiovisual Code effectively requires community broadcasters to register as commercial broadcasters. They will not benefit from reduced licence fees, and for the purposes of licence applications, they will be assessed on the same terms as commercial broadcasters. This is likely to preclude their development and prevent many small communities from gaining access to this means of communication. We therefore recommend that the Code follow the example of many other democracies (Serbia and Montenegro,[19] Georgia,[20] the United Kingdom[21] and Ireland,[22] to name but a few) and explicitly recognise community broadcasting alongside public and private broadcasting.

Building recognition of community broadcasting into the Audiovisual Code would require the following:

1) a definition of community broadcasting;
2) a system for ensuring that broadcast frequencies are reserved for community broadcasting;
3) a simplified licensing procedure for such broadcasters; and
4) non-discriminatory financial support measures which leave the independence of community broadcasters intact, such as an exemption from or reduction of the licence fee and tax exemptions.

[18] For explicit recognition of this emerging principle, see the *Declaration of Principles on Freedom of Expression in Africa*, Principle V, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia. See also the Supreme Court of Argentina's decision in *Asociación Mutual Carlos Mujica v. the State*, 1 September 2003.
[19] See http://www.coe.int/T/E/Human_Rights/media/3_Assistance_Programmes/3_Legislative_expertises/Serbia_and_Montenegro/ATCM(2004)019%20E%20Montenegro%20Braod%20Dev%20Strategy.asp.
[20] See http://www.coe.int/T/E/Human_Rights/media/3_Assistance_Programmes/3_Legislative_expertises/Georgia/ATCM(2003)004rev%20E%20Comments%20Georgian%20Law%20Communications%20&%20Broadcasting.asp.
[21] See Section 262 of the Communications Act 2003, and the Community Radio Order 2004.
[22] See http://www.dcmnr.gov.ie/files/BroadcastingFinal.doc.

The definition of community broadcasting should provide, at a minimum, that community broadcasters 1) are operated by non-governmental organisations or individuals and are independent of political or commercial interests; 2) operate on a not-for-profit basis; and 3) serve the interests of an identifiable community. For the definition of what constitutes a 'community', best practice is to use both a territorial definition (under which, for example, a frequency would be made available for one community broadcaster in each province or municipality) and an 'interest group' definition (under which licences would be awarded to broadcasters serving a particular community of interests, such as an ethnic, linguistic or religious groups or women or children). For recent legislative examples, we refer to the United Kingdom's Community Radio Order 2004;[23] or, further afield but no less relevant, Article 2 of Botswana's Broadcasting Act 1998.[24]

Another issue which will need to be addressed by the Code is the status of any existing community broadcasting stations which operate without a licence. Since such stations may already make a useful contribution to a pluralist broadcasting system, it is important that they not be closed down as a result of the enactment of the Code, but that a careful review process be undertaken in order to decide whether they are eligible for a licence. A draft broadcasting law under consideration in Sudan, which aims to be fully compliant with international law and best international practice, provides the following transitional procedure:

> Existing broadcasting services
>
> 47. (1) Within two months of its establishment, the Authority shall initiate a review of all existing broadcasting services with a view to deciding whether or not to issue these services with a valid licence under section 23 of this Act. This review shall be concluded within 12 months of the establishment of the Authority.
>
> (2) Notwithstanding the provisions of this Act, any agreements or licences to provide broadcasting services in force immediately prior to the date of commencement of this Act shall be deemed to be valid broadcasting licences for the purposes of this Act, unless the Authority, acting in the exercise of its duties under subsection (1), decides otherwise.
>
> (3) Where an agreement or licence referred to in subsection (2) under which an existing broadcaster is operating fails to specify the number of broadcasting services which may be provided, the number of such services shall be deemed to be the number being provided at the time this Act comes into force.

[23] Which can be accessed at http://www.opsi.gov.uk/si/si2004/20041944.htm.
[24] Which can be accessed at http://www.bta.org.bw/pubs/Broadcasting%20act%20of%201998.pdf.

Summary of Recommendations

Recommendation on the scope of the Code:

- The reference to the Internet should be deleted from Article 2(h).

Recommendations on principles and rules applicable to all broadcasters:

- A provision should be added to the Audiovisual Code which elaborates on the content of the Code of Conduct, whose adoption is required by Article 40(f). At a minimum, this provision should state that the Code of Conduct will clarify the vague terms and concepts found in Chapter II, such as "equitable", "balanced", "impartial", "comprehensive", "objective" and "accurate".
- Article 10(3) should be deleted, and the responsibility to protect the rights of programme consumers in accordance with the Code of Conduct should be entrusted to the Coordinating Council.
- The requirement under Article 11(2) to broadcast 50% of own, local and European production during prime time should be revised, given that it cannot be complied with by stations which broadcast for more than 17½ hours per day. Consideration should also be given to deleting Article 3(7), which is largely deprived of meaning by Article 11(2).
- Articles 11(3) and (4) should be redrafted to ensure that they can be interpreted only in one way.
- The language requirements of Articles 11(1) and (9) should be removed.

Recommendations on the administration of licences for private broadcasting:

- Articles 35 and 36 should stipulate that the process leading to the adoption of the 'Strategy for National Territorial Coverage with Audiovisual Programme Services' and the 'National Plan for Land Radio-electric Frequency Distribution' will be open and consultative.
- Articles 35 and 36 should state clearly that the Plan and the Strategy will share the available frequencies *equitably*, between national, regional and local broadcasters, between radio and television, and between private, public service and community broadcasters.
- The Code should stipulate a maximum interval between successive licence competitions for private broadcasting, or allow licence applications to be made at the initiative of an interested broadcaster at any time, outside of any call for tenders.
- The technical capacity of an applicant to implement the proposal should be added as an additional criterion in Article 23(3)(c).
- Article 23(3)(b) should be split into two separate items: first, whether the proposed broadcasting service will contribute to a diverse broadcasting landscape, by providing programming that meets needs which are not yet adequately served by other licence holders; and second, whether granting the applicant a licence would lead to a danger of excessive concentration of ownership in the broadcasting sector.
- The presumption of licence renewal under Article 24(1) should be preserved but weakened, allowing the organisation of a new licence competition if this is clearly in the public interest. The rule that licences cannot be renewed more than twice should be removed.

- In Article 25(1)(n), the phrase "complete, objective, and accurate information" should be removed. Viewers' right to be honestly informed can adequately be ensured through the Code of Conduct, without the need for vague licence terms.
- The broadcast licence fee of Article 23(6), the fee for the technical licence of Article 31(4), the charge for usage of a frequency of Article 31(4) and the 'regulation fee' of Article 47(2) should be bundled into one single charge levied on private broadcasters. The manner in which this charge is calculated should be announced in advance.
- The requirement to seek a separate technical licence under Article 31 should be abolished. Broadcasters who are granted a broadcasting licence should automatically receive a technical licence.
- Article 33 should not permit the specialised central authorities to transfer a broadcaster to a different frequency, unless there is an imperative need and waiting until the end of the licence term is not possible. Moreover, the decision should be justified and in writing, announced a set number of weeks in advance, and be subject to court appeal.
- The requirement to seek separate authorisation to rebroadcast programmes under Article 28 should be abolished. Whether the broadcaster plans to engage in retransmission is a factor which should instead be taken into consideration when deciding to award a licence to an applicant.

Recommendations on control over broadcasters and sanctions:

- Article 37(4) should clarify that the Coordinating Council must *initiate*, rather than complete investigations into possible transgressions by broadcasters within fifteen days of receipt of a complaint. A further time-limit should be added within which the investigation must be completed.
- Article 38(4) should make it clear that, in principle, the Coordinating Council handles all complaints against broadcasters. Referrals to other law enforcement bodies should only be made in specified, exceptional circumstances, such as direct incitement to crime condoned or endorsed by the broadcaster.
- Article 38(7) should stipulate how much time a broadcaster has to prepare its defence and whether its submission should be made in writing or orally.

Recommendations on the structure of the Coordinating Council:

- Article 42 should require the selection process for members of the Coordinating Council to be transparent. In particular, the sessions and documents of the 'specialty parliamentary committee', the Parliamentary Committee for Legal Issues, Appointments and Immunities and the plenary Parliament related to the appointments process should be open to the public, Any interested party should be able to submit comments to the two committees.
- The Code should require that the emergence of a vacancy on the Coordinating Council be announced widely through advertising.
- A provision should be added to the Code requiring the composition of the Council to reflect broadly the diversity of Moldovan society.
- Consideration should be given to requiring a minimum number of women to be represented in the membership of the Coordinating Council.
- The phrase "conviction through a final court decision" in Article 43(5)(c) should be amended, making it clear that only conviction for a violent crime or a crime involving dishonesty constitutes a ground for removing a member.

- The emergence of one of the incompatibilities specified in Article 44 should be added to Article 43(5) as a ground for removing a member.
- The Code should allow for the removal of members only by the same majority of votes in Parliament as is required for the appointment of a member and a member should have the right to appeal to the courts against any removal decision.
- Article 47(1) should make it clear that it is the responsibility of Parliament to ensure that the Coordinating Council is funded at an adequate level.
- The Council's budget should be determined for a three or four year period rather than annually and the level of funding should be corrected annually for inflation.
- The last sentence of Article 47(3), which prohibits using income from non-State sources to pay Coordinating Council members and staff, should be removed.
- The Code should set out rules to on who determines the salary of the Director of the Coordinating Council.
- The Code should provide details on what must be included in the Council's annual report to Parliament. This report should be published and disseminated to interested persons.

Recommendations on Teleradio Moldova's governance structure:

- As with the Coordinating Council, the Supervisory Board of Teleradio Moldova should be required to be broadly reflective of Moldovan society as a whole.
- The phrase "conviction through a final court decision" in Article 59(c) should be amended, making it clear that only conviction for a violent crime or a crime involving dishonesty constitutes a ground for removing a member of the Board.
- The emergence of one of the incompatibilities specified in Article 57(2) should be added to Article 59 as a ground for removing a member.
- The Code should allow for the removal of members only by the same majority of votes in the Coordinating Council as is required for the appointment of a member and a member should have the right to appeal to the courts against any removal decision
- The matter of editorial independence of Teleradio Moldova an the role of the Board in relation to this should be clarified.
- Teleradio Moldova's accountability to the public should be strengthened, by stipulating what should be contained in the company's annual public report, by establishing a complaints procedure which allows members of the public to protest perceived breaches of the company's editorial policy, and through other means, for example by scheduling monthly radio and television programmes dedicated to discussing audience feedback.

Recommendations on Teleradio Moldova's independence and funding:

- The Code should be amended to ensure multi-year funding for Teleradio Moldova. with a built-in annual rise to correct inflation.
- Alternative funding mechanisms should be explored, such as a tax on private broadcasters.
- Consideration should be given to specifying a cap on the amount of advertising that Teleradio Moldova may broadcast per hour and per day, as well as on the share of advertising revenue in the company's total income.

Recommendations on community broadcasting:

- The Audiovisual Code should establish a three-tier broadcasting system, recognising community broadcasting in addition to public and private broadcasting.

- 'Community broadcasters' should be defined as stations run on a not-for-profit basis for the benefit of an identifiable community, either geographic or a community of interest, free from political or commercial interference.
- Frequencies should be reserved for community broadcasters.
- The licensing procedure for community broadcasters should be simplified and they should be exempted from the licence fee or be given a reduced rate.
- The Audiovisual Code should provide for a transitional period in which any existing unauthorised community stations are given a fair opportunity to be licensed.

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