Memorandum

on the draft

Audiovisual Code of the Republic of Moldova

London
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Summary of Recommendations

In relation to the scope of the draft Code:

- The reference to the Internet should be deleted from Article 2(h), ensuring that the Code does not apply to Internet content.

In relation to the structure of the 'Coordinating Council of the Audiovisual':

- Nominations for membership in the Coordinating Council of the Audiovisual should not be made by a parliamentary commission; instead, this commission should call for nominations from the general public through advertisements in leading media outlets.
- The Code should provide that the commission's selection hearings will take place in public and will allow for input and comments from any interested party.
- The Code should stipulate that the commission will strive to select a gender-balanced Council whose members reflect the diverse makeup of Moldovan society.
- The terms of Council Members should be staggered. Of the initial group of Council Members, some should serve shorter terms.
- Decisions to forcibly remove members of the Council should be taken by Parliament by the same majority of votes needed for appointment, and should be subject to judicial review.
- "Loss of citizenship" and "health reasons" as grounds for removing a Council member under Article 43(3) should be more restrictively defined, to reduce the potential for abuse.
- The Code should provide that the council may receive income from a number of sources, including income from licence fees, penalties and grants, and that the level of the State grant should be set at such a level as to guarantee that it can carry out its duties effectively. Ideally, the State grant should be determined for a budget cycle of three years or more and be indexed for inflation.
- The Code should set out in more detail which information should be included in the Council's annual report to Parliament.

In relation to the powers of the Council:

<u>The 'Programme Service Territorial Coverage Strategy':</u>

- The division of labour between the Council and the National Regulatory Agency for Telecommunications and Informatics as regards frequency planning should be more clearly defined.
- Frequency planning should be equitable and based on three categorisations: 1) the three tiers of broadcasting (public, commercial and community); 2) the two types of broadcasters (radio and television); and 3) broadcasters of different geographic reach (national, regional and local).
- The frequency planning process should be open and consultative and allow for public input.

The administration of licences:

- The Code should allow for licence applications to be made even in the absence of a formal invitation to tender.
- The list of criteria applied by the Council in deciding upon licence applications should be clarified and expanded.
- The Code should set a three year licence term for community broadcasters.
- All licensing decisions by the Council should be open to appeal by directly affected parties.
- The Code should specify a procedure whereby licence fees are set out in a publicly available schedule.
- The requirement under Article 31 for broadcasters to seek a separate 'technical licence' should be removed.
- The Telecommunications Agency should not be able to change the frequency allocated to a licensed broadcaster, except in cases of proven need. The Code should specify further safeguards in this respect.

Control over broadcasters and sanctions:

- Temporary suspension should be introduced as an intermediate step between the imposition of a fine and complete withdrawal of the licence.
- The Code should state that sanctions will be imposed in a graduate fashion, with a fine normally only being imposed after warnings have failed to solve the problem.
- Suspension and withdrawal of the licence should be defined as remedies of last resort.
- Broadcasters should be notified of any investigations opened against them and be given an adequate opportunity to make representations to the Council.
- The Council's decision should be in writing, stating reasons, and should be made publicly available.
- Decisions to impose any penalty should be subject to judicial review.
- Article 27 should be thoroughly revised, consistent with the idea that licence withdrawal is a sanction of last resort.

Council powers over Teleradio Moldova:

- The Code should not allocate special supervisory and appointment powers in respect of Teleradio Moldova to the Council. Instead, the public service

broadcaster should be overseen by its own supervisory board.

In relation to the Public Service Broadcaster (Teleradio Moldova):

Mandate and guiding principles of the public service broadcaster:

- Articles 51, 52 and 56, dealing with the mandate and guiding principles of the public service broadcaster, should be merged into a single, short and clearly defined provision.
- The public service broadcaster's mandate should include the promotion of racial, ethnic and gender equality, both through its programming and in its internal policies.
- The public service broadcaster should be required to provide children's programming.

The public service broadcaster's governance structure:

- The Council should not be Teleradio Moldova's supervisory body. Instead, a separate supervisory body should be established whose tasks are integrated with that of the proposed Executive Board. The members of the new supervisory body should be appointed in an analogous manner to Council members. The supervisory body should be responsible for ensuring that Teleradio Moldova fulfils its mandate, but not be involved in the day-to-day running of the company or in day-to-day programming decisions. The supervisory body's responsibilities should include protecting the broadcaster's independence and ensuring accountability to the public.
- The President and senior staff should enjoy editorial independence. The President should be responsible for day-to-day management of the public service broadcaster and have the necessary powers in this regard, including to hire and fire staff.
- The President and senior staff should be appointed by the supervisory body.
- Measures should be taken to enhance Teleradio Moldova's accountability, including requiring it to produce an annual report, establish a complaints procedure and undertake audience research.

The public service broadcaster's institutional independence:

- The Code should guarantee stable and long-term funding over multi-year cycles.
- Other methods of funding should be explored in addition to the State subsidy, such as a through a viewers and listeners' fee or a fee levied on commercial broadcasters.

In relation to 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 by not-for-profit organisations for the benefit of their community, free from political or commercial interference.
- 'Community' should be defined both in regional terms and in terms of groups with shared interests.
- 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.

In relation to rules applicable to all broadcasters:

- Article 4(6) should be amended to guard effectively both against concentration of ownership within the broadcast sector and against cross-ownership in different types of media.
- The Code should provide for the drafting of a code of conduct for the broadcasting sector, through a consultative process involving broadcasters and any other interested parties.
- The code of conduct should at a minimum elaborate on the meaning of all the content restrictions applicable to broadcasters under the Audiovisual Code, such as those found in Articles 6, 7 and 10.
- Article 7(2) should be amended either to prohibit private broadcasters from granting direct access airtime to political parties, or to permit them to do so on an equitable, rather than equal basis.
- Article 11(2) should be deleted.
- The percentage in Article 11(7) should be reduced to below 50%.
- Items in news broadcasts should not be limited to 90 seconds.
- Articles 14-17 should be transferred to appropriate laws of general application, such as the code of criminal procedure and the civil code.
- The protection against search and seizure on broadcasters' premises under Article 15(3) should be extended to cover all types of buildings where journalistic work product is stored, and should be strengthened in line with the European Court of Human Right's ruling in *Roemens and Schmit v. Luxembourg.*

1. Introduction

This Memorandum provides ARTICLE 19's analysis of the draft Audiovisual Code of the Republic of Moldova (the draft Code) against international standards on freedom of expression.[1] ARTICLE 19 is an international, non-governmental human rights organisation that works with partner organisations around the world to protect and promote the right to freedom of expression. We have provided recommendations and constructive criticism on many previous legislative proposals in the area of freedom of expression in Moldova, including the Law on Freedom of Information, the Law on Freedom of the Press, the Law on Combating Extremist Activities, the defamation provisions in various laws and the provisions relating to media coverage of the March 2005 Parliamentary elections.[2]

We would like, first, to express our serious concern about the apparent haste with which this law is being sped through parliament. We understand that the text of the draft Code was only made public on 28 March 2006; and that it was approved in first reading on April 6. This hurried procedure fails to provide an effective opportunity for genuine consultation with civil society and the media. We submit that it would be a painful irony if a law which, according to its first Article, aims to establish "democratic working principles of the audiovisual in the Republic of Moldova" would be adopted in an undemocratic manner and strongly urge the authorities to extend the deadline for comments and to take due time to consider the many comments that will be submitted. This is an important piece of legislation; it will serve as the foundation for broadcast regulation in Moldova for the foreseeable future. Best practice in other countries is to provide a minimum period of six weeks for consultation on a draft law or policy paper, with another minimum period of two weeks between each of the parliamentary stages. This allows for proper consideration of the law in parliament and allows all stakeholders to be engaged, and improves the final, overall quality of legislation.

Procedural issues aside, ARTICLE 19 welcomes the Moldovan authorities' effort to reform legislation in the broadcasting sector. The draft Code is an ambitious project which seeks to regulate the entire broadcast sector, including both the awarding of licences to privately owned channels and the management of the country's public service broadcaster. On the whole, it is evident that the proposal has been made with the intention of bringing Moldovan law in line with relevant international standards. However, we are concerned at a number of the proposed changes. First, we do not believe it will be possible for the proposed new regulator to also act as the supervisory body for the public service broadcaster. We do not believe this will be workable, for the simple reasons that the task of regulating the airwaves is very different in nature from supervising the public service broadcaster, and that combining both tasks in one body is likely both to result in an unmanageable workload and also detract from the effectiveness of the supervision. Second, we are concerned that the proposal appears to leave no scope for 'community broadcasting' – broadcasting by small, non-profit stations that serve a distinct community (for example, an ethnic or linguistic minority). Third, there are a number of small but important issues that need to be addressed, ranging from setting more realistic targets for Moldovan production to clarifying the licensing procedure. We elaborate on these concerns in Section 3 of this Memorandum. If they are addressed

[1] Our analysis is based on an unofficial translation of the draft Code provided by the Independent Journalism Center.
[2] Most of these reports can be accessed on the Law and Europe publications pages of the ARTICLE 19 website, at http://www.article19.org/publications/index.html.

satisfactorily – and we would like to stress, again, that due time needs to be taken for this – we are optimistic that the Code can importantly contribute to realisation of the right to freedom of expression in Moldova.

Our Comments are based upon 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 stated in recommendations by the Council of Europe's Committee of Ministers. The relevant standards are summarised in ARTICLE 19's *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (the ARTICLE 19 Principles),[3] a set of guidelines based on international practice, comparative constitutional law and best practice in countries around the world.

[3] London, April 2002.

2. Relevant international standards

This section briefly sets out the key international standards on broadcast regulation and freedom of expression. The analysis of the draft Code in Section 3 below is based on and refers back to these standards.

2.1. The Guarantee of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR)[4] is the flagship statement of the right to freedom of expression under international law:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

As a resolution of the UN General Assembly, the UDHR is not directly binding on States, but parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law.[5] Moreover, Moldova is a party to a number of binding treaties which are based on the UDHR and contain guarantees of the right to freedom of expression defined in similar terms to Article 19. These include Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),[6] acceded to by Moldova on 26 January 1993, and Article 10 of the *European Convention on Human Rights* (ECHR),[7] ratified by Moldova on 12 September 1997.

The meaning of the freedom of expression provisions in the ICCPR and ECHR has been extensively elaborated by the *UN Human Rights Committee* and the *European Court of Human Rights*, the two bodies charged with overseeing compliance with the respective treaties. The analysis below will draw on the jurisprudence of these two bodies. Reference will also be made to relevant standards and decisions adopted in other regional human rights systems, such as decisions of the *Inter-American Court of Human Rights* and the *African Commission on Human and Peoples' Rights*. While these standards are not directly binding on Moldova, they cast light on the proper interpretation of the UDHR, ICCPR and ECHR and are indicative of good practice.

2.2. Restrictions on Freedom of Expression

The right to freedom of expression is not an absolute right; it may, in certain narrow circumstances, be restricted. Article 10(2) ECHR lays down the general formula for assessing the legitimacy of such restrictions. It states:

[4] UN General Assembly Resolution 217A (III), adopted 10 December 1948.
[5] See, for example, *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Rep. 1970 3 (International Court of Justice); *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice); *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit). Generally, see M.S.McDougal, H.D.Lasswell, L.C.Chen, *Human Rights and World Public Order*, Yale University Press (1980), pp. 273-74, 325-27.
[6] UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.
[7] Adopted 4 November 1950, in force 3 September 1953.

> The exercise of [freedom of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

This has been interpreted as establishing a three-part test, requiring that any restrictions (1) be prescribed by law, (2) pursue a legitimate aim and (3) be necessary in a democratic society.[8] The European Court of Human Rights has stated that the first requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[9] Second, the interference must pursue one of the aims listed in Article 10(2); the list of aims is an exhaustive one and thus an interference which does not pursue one of those aims violates Article 10. Third, the interference must be necessary to secure one of those aims. The word "necessary" means that there must be a "pressing social need" for the interference.[10] The reasons given by the State to justify the interference must be "relevant and sufficient" and the State must further show that the interference is proportionate to the aim pursued.[11]

2.3. Media Freedom

The guarantee of freedom of expression applies with particular force to the media, including both private and public broadcasters. Because of their fundamental role in informing the public, the media as a whole warrant special safeguard. As the European Court has stated:

> [I]t is […] incumbent on [the press] to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.[12]

This does not imply that the broadcast media should be entirely free and unregulated; Article 10 of the ECHR states that the right to freedom of expression "shall not prevent States from requiring the licensing of broadcasting … enterprises". However, there are a number of constraints to such regulation. First, and generally, any licensing system established by States must pass the 'prescribed by law' and 'necessary in a democratic society' parts of the three-part test for restrictions discussed in the previous section.[13] Second, an important goal of regulation must be to promote pluralism and diversity in the airwaves.[14] The airwaves are a public resource and must be used for public benefit, of which an important part is the public's right to receive information and ideas from a variety of sources. Third, any bodies with regulatory powers in this area must be independent of government.[15]

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[8] See, for example, *Sunday Times v. the United Kingdom*, 26 April 1979, Application No. 6538/74 (European Court of Human Rights).
[9] *Ibid.*, at para. 49.
[10] See, for example, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.
[11] *Lingens v. Austria*, 8 July 1986, 8 EHRR 407, paras. 39-40.
[12] *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.
[13] See, for example, *Informationsverein Lentia and Others v. Austria*, 28 October 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, para. 32.
[14] *Ibid.*, para. 38.
[15] Council of Europe Recommendation (2000)23, Adopted by the Committee of Ministers on 20 December 2000.

2.4. Promoting Pluralism

The need for pluralism in the media goes to the heart of the public's right to receive information. As the European Court of Human Rights stated: "[Imparting] information and ideas of general interest […] cannot be successfully accomplished unless it is grounded in the principle of pluralism."[16]

The obligation to promote media pluralism incorporates both freedom from unnecessary interference by the State, as well as the need for the State to take positive action to promote pluralism.[17] States may not impose restrictions which have the effect of unduly limiting or restricting the development of the broadcasting sector and, at the same time, States should put in place systems to ensure the healthy development of the broadcasting sector, and that this development progresses in a manner that promotes diversity and pluralism. This has been affirmed at the constitutional level in a number of countries. Both the German and French constitutional courts, for instance, have held that the State is under an obligation, when designing a regulatory framework for broadcasting, to promote pluralism. The French *Conseil Constitutionnel*, when assessing the legitimacy of a 1986 law on communications, found that the principle of pluralism of information was of constitutional significance.[18] Similarly, the German Constitutional Court has held that broadcasting must be structured in such a way as to ensure the transmission of a wide range of views and opinions.[19]

2.5. Public Service Broadcasting

An important contribution to pluralism in the broadcast media can be made by public service broadcasters, whose status and founding charters bind them to provide programming that caters to the needs of different groups in society. For this reason, a number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism. For example, an EU Resolution adopted in 1999 recognises the important role played by public service broadcasters in ensuring a flow of information from a variety of sources to the public and notes that they are of direct relevance to democracy, and social and cultural needs, and media pluralism. As a result, funding by States to such broadcasters is exempted from the general prohibition in EU law on state-funding for broadcasters.[20] For the same reasons, the 1992 *Declaration of Alma Ata*, adopted under the auspices of UNESCO, calls on States to encourage the development of public service broadcasters.[21]

Resolution No. 1: Future of Public Service Broadcasting of the 4th Council of Europe Ministerial Conference on Mass Media Policy, Prague, 1994, promotes very similar principles. This resolution notes the importance of public service broadcasting to human rights and democracy generally, and the role of public service broadcasting in providing a forum for wide-ranging public debate, innovative programming not driven by market forces and promotion of local production. As a result of these vital roles, the resolution recommends

[16] *Informationsverein Lentia and Others v. Austria*, note 13, para. 38.
[17] See Principle 3 of *Access to the Airwaves*.
[18] Decision 86-217 of 18 September 1986, Debbasch, 245.
[19] See the *First Television* case, 12 BverfGE 205 (1961).
[20] Official Journal C 030, 5 February 1999, clause 1.
[21] 9 October 1992, endorsed by the General Conference at its 28th session in 1995, Clause 5.

that member States guarantee at least one comprehensive public service broadcaster which is accessible to all.

3. Analysis of the Draft Code

3.1. Overview

The draft Code is divided into two parts; the first part deals with general issues applicable to all broadcasters, such as rules relating to the content of broadcasts and the procedure for awarding licences, while the second part is concerned with the 'Coordinating Council of the Audiovisual' (the broadcast regulator, hereinafter 'the Council') and the 'Public Radio Broadcaster' (the public service broadcaster, which includes the national television station; hereinafter 'the public service broadcaster').

This Memorandum departs from the organisation of the draft Code and will discuss the following six topics consecutively: 1) the scope of the draft Code; 2) the structure of the Council; 3) powers of the Council; 4) public service broadcasting; 5) community broadcasting; and 6) general rules applicable to all broadcasters.

3.2. Scope of the Draft Code

The sphere of application of the draft Code is defined in Chapter 1. Article 1 establishes that the Code will apply to "broadcasting and /or re-broadcasting by means of TV and radio", with the exception of "closed-circuit TV and radio which is not intended for mass reception, as well as the activity of the radio-amateurs." Article 4 deals with the Code's territorial reach, which extends essentially to any broadcaster either licensed to broadcast in Moldova, operating principally on the territory of Moldova or using a satellite capacity belonging to Moldova.

Analysis

We believe the territorial reach of the draft Code is properly defined. We have a serious concern, however, with regard to the thematic scope of the draft, stemming from the definition of 'audiovisual communication' under Article 2(h). As currently drafted, this includes the following formulation: "offering different program services to the public by using terrestrial frequencies and other technical means (broadcastings, satellites, cable, Internet, etc.)." We are not sure what the significance of the inclusion of the Internet under this definition is; however, we stress that the Internet is a fundamentally distinct medium that calls for a different regulatory treatment than broadcasting. The licensing system provided by the draft Code for terrestrial broadcasters would not be appropriate to Internet broadcasts or any other kind of online content. 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 have 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.[22]

[22] *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.

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

Recommendations:

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

3.3. Structure of the Council

Chapter VII of the draft Code sets out provisions relating to the establishment of the 'Coordinating Council of the Audiovisual'. We will discuss the Council's powers in section 3.4 below; this section is concerned solely with the structure of the Council and the related question of its representativeness and independence from political, commercial and other interests.

Article 39 of the draft Code establishes the Council as an independent public body under parliamentary control, with all the attributes of public legal entities. The Council consists of 9 members, nominated by a parliamentary commission whose composition reflects the number of seats held by the different political parties (Art. 42(1) and (2)). Candidates for membership in the Council are confirmed by a vote of two-thirds of all Members of Parliament (Art. 42(3)). They must possess a diploma of higher education, be between 25 years and the legal age for retirement, and speak the official language of Moldova (Art. 42(4)). Council members serve in their personal capacity for a term of 5 years, and may not serve for more than two terms consecutively (Art. 43). The members elect a President and a Deputy President amongst themselves by a simple majority of votes (Art. 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. Newly appointed Members have 30 days to resolve any existing incompatibilities, during which time they may not participate in votes (Art. 44(4)). In all other cases, incompatibility will lead to dismissal (Art. 44(5)). Article 43(3) sets out a number of further situations in which vacancies may arise: 1) resignation; 2) expiration of the term of holding the position; 3) condemnation by a definite decision of the court; 3) loss of citizenship of the Republic of Moldova; 3) for health reasons; 4) at reaching the age of 65.

Funding for the Council comes from the State budget of the Republic. The Council submits a budget to Parliament annually which is discussed and approved in a plenary session (Art. 47). Members of the Council are remunerated "according to the legislation in force" (Art. 46). Financial oversight of the Council is exercised by Parliament, to which the Council must submit an annual report of its activities (Art. 47(4), Art. 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 representativeness of society as a whole.

With respect to the appointment procedure, we are concerned that entrusting a parliamentary commission with the responsibility to *nominate* candidates for membership in the Council could lead to a politicised pool of nominees, selected on the basis of their sympathy for the party advancing their candidature rather than their proven expertise in broadcast matters. Instead, we recommend that the system which is followed in several other countries be adopted, whereby vacancies that arise on the Council are advertised in national newspapers, inviting nominations by any interested civil society organisation or individual. The actual selection of Council members from amongst the nominees can certainly be made by the parliamentary commission. This selection process should, however, be transparent; we recommend explicitly stipulating in the Code that sessions and hearings of the commission will take place in public and will allow for input and comments from any interested party.

Another concern is the absence of any guarantee that the composition of the Council will broadly reflect the diversity of Moldovan society. 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 (as is recognised in Article 43(1) of the current draft). 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. In order to promote gender diversity, it may also be advisable to stipulate a minimum number of female members.

With regard to the terms of Council members, the Council's institutional memory and the consistency of its policies would benefit if the terms of its members were staggered; that is, the terms of members should not all commence and end on the same date but should be spaced evenly so that, for example, three members are replaced every 20 months. In order to achieve such a system, the Code will have to specify a transitional arrangement whereby certain members are initially appointed for shorter terms than normal.

The grounds for removal of a member of the Council also require some further attention. It is not clear, firstly, what exactly "condemnation by a definite decision of the court" means. This may be a matter of translation, and 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 – not a trivial offence. Generally, we recommend that a decision to remove a member (in cases other than voluntary resignation or death) can only be taken by the same majority of votes in Parliament as is required for the appointment of a member. The member concerned should then be guaranteed an opportunity to appeal the decision in court according to ordinary procedures. Second, we are concerned that "loss of citizenship" as a ground for removal could, in extreme cases, be abused. For the avoidance of doubt, we recommend changing this language to "voluntary renunciation of citizenship of the Republic of Moldova." Third, we have similar concerns about "health reasons" as a ground for dismissal. This problem could be addressed by changing the phrasing to "clear inability to continue to perform the duties of the member effectively due to ill-health."

Financial independence of the Council and its members is an important aspect of its political independence. Instead of being made completely dependent on an allocation from the State budget, the Code should stipulate that the Council may receive income from a variety of sources, including licence fees and penalties applied to broadcasters. The Code should also guarantee that to the extent necessary, this income will be supplemented in a regular and

predictable way by a grant from the State budget. 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.

Finally, the draft Code should set out in more detail what should be included in the annual report to Parliament. A possible 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 Plan on Terrestrial Radio-Electric Frequency Distribution;
- 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.

Recommendations:

- Nominations for membership in the Coordinating Council of the Audiovisual should not be made by a parliamentary commission; instead, this commission should call for nominations from the general public through advertisements in leading media outlets.
- The Code should provide that the commission's selection hearings will take place in public and will allow for input and comments from any interested party.
- The Code should stipulate that the commission will strive to select a gender-balanced Council whose members reflect the diverse makeup of Moldovan society.
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- Decisions to forcibly remove members of the Council should be taken by Parliament by the same majority of votes needed for appointment, and should be subject to judicial review.
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- The Code should provide that the council may receive income from a number of sources, including income from licence fees, penalties and grants, and that the level of the State grant should be set at such a level as to guarantee that it can carry out its duties effectively. Ideally, the State grant should be determined for a budget cycle to three years or more and be indexed for inflation.
- The Code should set out in more detail which information should be included in the Council's annual report to Parliament.

3.4. Powers of the Council

The draft Code entrusts four key powers to the Coordinating Council of the Audiovisual: first, development of a 'Programme Service Territorial Coverage Strategy' (Art. 35); second, the administration of broadcast and re-broadcast licences (Arts. 23-34); third, the exercise of control over and application of sanctions to broadcasters (Arts. 37-38); and fourth, appointing the management of the public service broadcaster (Teleradio-Moldova) and supervising its activities (Arts. 50-66). These activities are summarised in Article 40 ('Council Attributions') and will be discussed one by one in the following sub-sections.

3.4.1. The 'Programme Service Territorial Coverage Strategy'

Article 35 of the draft code charges the Council with the development of a 'Programme Service Territorial Coverage Strategy' (Strategy). It appears from Article 35 that 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 National Regulatory Agency for Telecommunications and Informatics, (Telecommunications Agency) which is responsible for administration of the electromagnetic spectrum.

According to Article 36, the Telecommunications Agency develops a higher-level plan, called the 'National Plan on Terrestrial Radio-Electric Frequency Distribution', which allocates part of the spectrum for broadcasting use. This plan also " include[s] all frequencies, as well as the associated technical data for broadcasting the program services for the public, specifying the local, regional or national nature of these" and "contains at least 6 national frequencies of audio radio broadcasting and 5 national frequencies of television broadcasting."

Analysis

We welcome the authorities' intention, demonstrated by the draft Code, to allocate frequencies according to a planned process. We are concerned, however, that the division of labour between the Council and the Telecommunications Agency is not clear – both seem to have the responsibility for creating a territorial plan for broadcasting. Moreover, we believe Articles 35 and 36 should state clearly that the Plan and the Strategy will share the available frequencies *equitably*, based on three categorisations: 1) the three tiers of broadcasting (public, commercial and community); 2) the two types of broadcasters (radio and television); and 3) broadcasters of different geographic reach (national, regional and local). We also strongly recommend including safeguards into the Code that the process leading to the adoption of the Strategy and the Plan will be open and consultative, to ensure that the public can make its views known on how the spectrum should be used.

Recommendations:

- The division of labour between the Council and the National Regulatory Agency for Telecommunications and Informatics as regards frequency planning should be more clearly defined.
- Frequency planning should be equitable and based on three categorisations: 1) the

three tiers of broadcasting (public, commercial and community); 2) the two types of broadcasters (radio and television); and 3) broadcasters of different geographic reach (national, regional and local).
- The frequency planning process should be open and consultative and allow for public input.

3.4.2. The administration of licences

Broadcast licences for terrestrial broadcasting in Moldova are to be distributed by the Council "on a contest basis" while licences for broadcasting through other means will be issued without contest (Art. 23(1) and (2)). Contests are publicised through the *Monitorul Oficial* and in various mass media; applications can be made only by legal persons or natural persons who possess the Moldovan nationality (Arts. 23(6) and (4)). The Council takes its decision no later than 20 days after the deadline for applications, "[a]fter an objective and impartial examination, from all points of view, of the applicants' offered programmes," in which it takes account of whether an applicant's "programme service and possible technical potential correspond to a greater extent to society's needs." Preference will also be given to applicants who propose to broadcast "own and local programme services". (Art. 23(8) and (9)).

Licences are granted for between 5 and 7 years, depending on the type of broadcaster (Art. 23(5)). The Council's decisions are not appealable in court (Art. 23(10)). 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 (Art. 24). Licences can be transferred only with the consent of the Council (Art. 26).

Within three months of obtaining a licence from the Council, prospective broadcasters must apply for a technical licence from the Telecommunications Agency, which is granted within five days and is valid for the term of the broadcast licence. The Telecommunications Agency develops the procedure for granting technical licences and determines the licence fee and tariff for use of the frequency (Art. 31). The Agency may unilaterally change a licence holder's frequency "for technical reasons or because of amending the National Plan for Frequency Granting" (Art. 33).

Analysis

We consider the provisions on licensing to be one of the weaker sides of the draft Code and urge the authorities to devote adequate attention to resolving their shortcomings, along the lines set out below.

First, although the awarding of licences for terrestrial broadcasting on a contest-basis is a good idea, we are concerned about the absence of any guarantee that such contests will indeed be organised on a regular basis. To ensure that broadcasters are given a regular opportunity to apply for a licence, the Code should additionally allow licence applications to be made at the initiative of an interested broadcaster, outside any tender procedure.

Second, the criteria according to which licence applications will be assessed leave the Council a considerable margin of discretion. The UN Human Rights Committee, the body of independent experts appointed under the ICCPR to monitor compliance with that treaty, has repeatedly expressed concern about broad grants of discretion to bodies regulating the

media.[23] The European Court of Human Rights has stated that when a grant of discretion is made to a media regulatory body, "the scope of the discretion and the manner of its exercise [must be] indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference."[24] We recommend substantially clarifying the factors that the Council must take into account. Consideration could be given to inclusion of the following additional items:

- whether awarding a licence to the applicant would further the goals set out in the 'Programme Service Territorial Coverage Strategy' and the 'National Plan on Terrestrial Radio-Electric Frequency Distribution';
- what the nature and extent is of the financial resources of the applicant and how financially viable the proposal is;
- the effect of licensing the proposed service on concentration of ownership, cross-ownership and fair competition;
- whether awarding the licence will promote the widest possible diversity of programming, taking into account existing demand and the extent to which licensed broadcasting services are already serving that demand;
- whether the applicant will produce local programming;
- whether the applicant is willing and able to ensure that the content of programmes and the station's staff fairly reflects and serves the diverse currents of Moldovan society, and is gender-balanced.

As regards the duration of broadcast licences, we believe a range of between 5 and 7 years is realistic. However, we have a concern relating to the distinction between 'broadcasting program services', which are given a 7 year licence, and 'broadcasting TV program services', which enjoy just a 5 year term. It is not clear to us what the difference between these two types of services is. Furthermore, we believe that a separate term should be defined for community broadcasters (see also section 3.6, below); this term can be shorter than 5 years, given the lower level of investment required for a small radio station and the uncertain technical and financial capabilities of many community stations. At the same time, the term for such licences should not be so short as to discourage investment in the station; we recommend it should be set at a minimum of three years. Finally, it is important that directly affected parties *are* able to contest a licensing decision by the Council. This is the ordinary practice in established democracies around the world; the possibility of judicial review provides an important safeguard of the broadcast regulator's observance of its mandate and of the rights of broadcasters and the general public.

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 draft Code fails to provide any clarification on the level of the fee. We recommend that a fee schedule should be set by the Council, in consultation with all stakeholders. Consideration may be given to requiring parliamentary approval for the fee schedule. Community broadcasters should not be required to pay a licence fee or, at a minimum, they should be given a substantially reduced rate, given their non-profit nature and limited ability to generate revenues.

[23] See its Concluding Observations on Kyrgyzstan, 24 July 2000, UN Doc. CCPR/CO/69/KGZ, para. 21 and its Concluding Observations on Lesotho, 8 April 1999, UN Doc. CCPR/C/79/Add.106, para. 23.
[24] *Wingrove v. United Kingdom,* 25 November 1996, Application No. 17419/90 (European Court of Human Rights), para. 40.

The requirement for applicants who have obtained a broadcast licence to seek a further 'technical licence' appears to be an unnecessarily bureaucratic measure, and may lead to broadcasters having to overcome additional hurdles and pay additional fees. Instead, the licensing procedure should serve as an all-in-one procedure and the Council should ensure that licencees are automatically given a frequency. If necessary, the Council should coordinate with the Telecommunications Agency to this effect. We also recommend that the Telecommunications Agency should not be able to transfer a station to a different frequency at will; it should only be able to do so upon a demonstration of urgent need. Its decision should be justified in writing and be subject to judicial review.

Recommendations:

- The Code should allow for licence applications to be made even in the absence of a formal invitation to tender.
- The list of criteria applied by the Council in deciding upon licence applications should be clarified and expanded.
- The Code should set a three year licence term for community broadcasters.
- All licensing decisions by the Council should be open to appeal by directly affected parties.
- The Code should specify a procedure whereby licence fees are set out in a publicly available schedule.
- The requirement under Article 31 for broadcasters to seek a separate 'technical licence' should be removed.
- The Telecommunications Agency should not be able to change the frequency allocated to a licensed broadcaster, except in cases of proven need. The Code should specify further safeguards in this respect.

3.4.3. Control over broadcasters and sanctions

Article 37 of the draft Code grants the Council responsibility to enforce the Code's provisions against broadcasters. In order to discharge this duty, the Council is vested with certain powers, such as the ability to request information from broadcasters within a specified term (Art. 37(2)), to issue a "subpoena of becoming legal" (the translation is unclear, but we assume this is some sort of warning or order to discontinue an impermissible activity), and to impose a fine or to revoke the broadcast licence (Art. 38(1)).

The Council can initiate an investigation of a broadcaster *ex officio*, upon the request of a public authority or after receiving a complaint from a directly affected natural or legal person (Art. 37(3)). 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(3) states that sanctions "are not applied successively, but depending on the gravity of the offence." The conditions under which broadcast licences may be withdrawn are set out in Article 27, as follows:

> (1) The Coordinating Council of the Audiovisual withdraws the broadcasting license in case the holder:

a) does not systematically follow the conditions provided for in the license;
b) violates the requirements of the present Code within his/her activity;
c) presents false information in order to obtain the license;
d) does not begin to broadcast the program service for not more than 6 months after the granting of the broadcasting license;
e) ceases to broadcast the program service for which he/she was granted the broadcasting license for a period of more than 45 days for technical reasons, and more than 72 hours for other reasons;
f) as a result of violating the standards on audiovisual property regime;
g) as a result of technical license withdrawal;
h) on holder's request.

(2) The court may cancel the broadcasting license if the contest for license granting was carried out by violating the provisions of the present Code.

Analysis

The provisions on sanctions contain a number of positive elements, but will require significant amendment if they are to become consistent with international standards. We are particularly concerned at the ease with which a licence may be withdrawn under the Code.

Article 27 establishes a very low threshold for applying the ultimate penalty of withdrawal of a broadcast licence. In our translation, Article 27(1)(a) states that licences may be terminated if their holder "does not systematically follow the conditions provided for in the licence." Perhaps this is a mistranslation; in any case, we recommend that termination should only be possible in case of systematic *violation* of the law rather than merely incomplete observance. Moreover, items (b) and (f) appear to permit suspension of licences for one-time and potentially minor infractions of the law; we recommend their deletion. Item (g) relates to the technical licence; as stated above, we do not believe such a licence should be required, and accordingly we also believe item (g) is unnecessary. Moreover, item (g) is highly vulnerable to abuse since it effectively transforms all the grounds for terminating a technical licence into grounds for terminating a broadcast licence. Given how vaguely those grounds are defined (in Article 34), this is a wholly unacceptable situation.

By contrast, items (d), (e) and (h), which provide that licences may be withdrawn if they are not being used for prolonged periods or if the holder so requests, are acceptable. The presentation of false information in order to obtain a licence could also be a valid ground for termination, as envisaged by item (c). This item should however be rephrased to make it clear that only deliberate and gross misrepresentation of an important fact will justify termination of a licence; as it is currently worded, any minor and accidental flaw in the application could be used as justification for withdrawal of a licence.

With regard to the range of sanctions in Article 38, we recommend that temporary suspension should be introduced as an intermediate step between the imposition of a fine and complete withdrawal of the licence.

We broadly welcome Article 38(3), which requires that sanctions should always proportionate to the gravity of the offence. This principle should be further strengthened by stating that the sanction of licence suspension or withdrawal will only be instated for repeated serious breaches, such as incitement to racial hatred, and if other sanctions have been tried and have failed to remedy the breach.

A number of safeguards should be built into the Code to ensure that the procedure leading to the imposition of sanctions is fair and transparent. Firstly, broadcasters should be notified of any investigations opened against them and be given an adequate opportunity to make representations to the Council. The Council's decision should be in writing, stating reasons, and should be made publicly available. Decisions to impose a penalty other than a warning should be made subject to judicial review.

The power of the 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 exceptional circumstances, such as direct incitement to crime condoned or endorsed by the broadcaster. The Council should retain its primacy as enforcer of the Code.

Recommendations:

- Temporary suspension should be introduced as an intermediate step between the imposition of a fine and complete withdrawal of the licence.
- The Code should state that sanctions will be imposed in a graduate fashion, with a fine normally only being imposed after warnings have failed to solve the problem.
- Suspension and withdrawal of the licence should be defined as remedies of last resort.
- Broadcasters should be notified of any investigations opened against them and be given an adequate opportunity to make representations to the Council.
- The Council's decision should be in writing, stating reasons, and should be made publicly available.
- Decisions to impose any penalty should be subject to judicial review.
- Article 27 should be thoroughly revised, consistent with the idea that licence withdrawal is a sanction of last resort.

3.4.4. Council powers over Teleradio Moldova

Pursuant to Article 56(2), the activity of Moldova's public service broadcaster "is subordinated to the public through the Council." Indeed, the draft Code allocates extensive supervisory powers over the public service broadcaster to the Council, ranging from the appointment and dismissal of its President and directors (Arts. 57 and 60) to the approval of its statute, policies, organisational structure, programme services and budget (Art. 63).

Analysis

We believe strongly that the Council's responsibilities in respect of broadcasting sector as a whole are incompatible with any additional supervisory role over the public service broadcaster, and urge the authorities to decouple management of the public service broadcaster from the Council's other functions, for a number of reasons.

First, the competencies required to make a good administrator of the broadcast system are quite different from those required to oversee a public service broadcaster; it will be difficult, if not impossible, to find candidates who unite all the necessary qualities and experience for both roles in them. Second, combining both responsibilities in one body is likely to leave that body with an excessive workload, with the result it will perform poorly in both of its tasks.

Third, the Council's responsibilities towards the public service broadcaster are likely to undermine private broadcasters' faith in the Council's impartiality. The public service broadcaster will inevitably be perceived as the Council's 'pet project', and decisions which appear to favour the public service broadcaster's interests over those of the private sector will be explained on this basis. What matters is not only the Council's factual independence, but also public confidence in it, and every effort should be made to preserve this confidence.

In sum, we are firmly of the view that the public service broadcaster should have a separate board overseeing it, in addition to the Executive Board proposed, along the lines recommended in Council of Europe Recommendation (1996)10 on the guarantee of the independence of public service broadcasting.[25]

Recommendations:

- The Code should not allocate special supervisory and appointment powers in respect of Teleradio Moldova to the Council. Instead, the public service broadcaster should be overseen by its own supervisory board.

3.5. The Public Service Broadcaster

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

- the mandate and guiding principles of public service broadcasting (Arts 51, 52 and 56);
- Teleradio Moldova's governance structure (Arts. 57-64); and
- a set of provisions pertaining to the institutional independence of the company (Arts. 50, 53, 65, 66).

These three groups of provisions will be discussed in order.

3.5.1. Mandate and guiding principles of the public service broadcaster

The mandate and guiding principles of the public service broadcaster, which are set out in Articles 51, 52 and 56, are wide-ranging and cover such items as providing correct, impartial and balanced information, the cultivation of tolerance, public morals and democratic values, the recording events of historical significance, encouraging the development of the nation and producing programmes in the official language and minority languages.

Analysis

With some important omissions, the guiding principles and objectives set for public service broadcasting broadly accord with international best practice. We have the following recommendations for improvement.

Most important, we note that while the draft Code sets the public service broadcaster a very broad mandate to provide "educational" programming and to serve "all the categories of citizens of the Republic of Moldova, including minorities", it does not require Teleradio Moldova to promote racial, ethnic and gender equality, both through its programming and in

[25] Council of Europe Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, adopted by the Committee of Ministers on 11 September 1996.

its internal policies, or to provide children's programming. These are matters that ought to be required of a public service broadcaster.[26] We also believe that readability and consistency of the Code would be enhanced if the three provisions that set out the public service broadcaster's mandate were merged. There does not seem to be a compelling logic behind the way the draft Code is currently organised, and having three separate provisions poses a risk of interpretational problems. For example, the relationship between Article 52, which states that the public service broadcaster should preserve and develop the official language and strengthen Moldova as a State, and Article 56(1), which mandates the public service broadcaster to produce programmes in the languages of national minorities, is not defined.

Finally, parts of the mandate are somewhat repetitive. For example, Article 51(b) speaks of promoting "national patrimony values", paragraph (d) of the same Article mentions cultivation of "civic spirit" and "national identity", while –as mentioned above- Article 52 mandates "strengthening the Republic of Moldova as a State" and "preservation and development of the nation." The Code would benefit if these kinds of items were brought together and merged into a single, short and clear statement. We also stress that these 'nation-building' ideals should not come at the cost of providing minority programming and promoting Moldova as a state where people of different ethnicities and who speak different languages live peacefully together.

By way of example, the ARTICLE 19 *Model Public Service Broadcasting Law* suggests the following provision defining a public service broadcaster's guiding principles and mandate:

> (1) SBC has an overall mandate to provide a wide range of programming for the whole territory of [insert name of State] that informs, enlightens and entertains, and that serves all the people of [insert name of State], taking into account ethnic, cultural and religious diversity.
>
> (2) SBC shall provide innovative and high quality broadcasting, which reflects the range of views and perspectives held in society, satisfies the needs and interests of the general public in relation to informative broadcasting, and complements programming provided by private broadcasters.
>
> (3) To fulfil its public service broadcasting role, SBC shall strive to provide a broadcasting service that: –
>
> (a) is independent of governmental, political or economic control, reflects editorial integrity and does not present the views or opinions of SBC;
> (b) includes comprehensive, impartial and balanced news and current affairs programming, including during prime time, covering national and international events of general public interest;
> (c) contributes to a sense of national identity, while reflecting and recognising the cultural diversity of [insert name of State];
> (d) gives a voice to all ethnic groups and minorities, including through the establishment of Ethnic/Minority Programming Services and the provision of programming in ethnic/minority languages;
> (e) strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
> (f) provides appropriate coverage of the proceedings of key decision-making bodies, including the [insert name(s) of the house(s) of Parliament];
> (g) includes programmes that are of interest to different regions;

[26] See, for example, the *Joint Statement on Racism and the Media* by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 27 February 2001. See also, for example, par. 3.2 of the BBC Agreement, requiring it to provide programming for children and young people.

(h) ensures the diffusion of important public announcements;
(i) provides a reasonable proportion of educational programmes and programmes oriented towards children;
(j) promotes programme production within [insert name of State]; and
(k) contributes to informed debate and critical thought.

(4) To encourage and promote programme production within [insert name of State], and to ensure that its programmes reflect a wide variety of views and perspectives, SBC shall work towards the goal of obtaining 20% of its total broadcasting from independent producers based in [insert name of State].[27]

Recommendations:

- Articles 51, 52 and 56, dealing with the mandate and guiding principles of the public service broadcaster, should be merged into a single, short and clearly defined provision.
- The public service broadcaster's mandate should include the promotion of racial, ethnic and gender equality, both through its programming and in its internal policies.
- The public service broadcaster should be required to provide children's programming.

3.5.2. The public service broadcaster's governance structure

The draft Code tasks an Executive Board with management of the public service broadcaster. This board will consist of a President, two Deputy Presidents who are also the directors of radio and TV, an unspecified number of executive producers and two financial specialists (Art. 57(1)). The President and the two Deputy Presidents are selected on the basis of a contest by a vote of two-thirds in the Council, and they then go on to propose "four other members of the Executive Board" to the Council for confirmation (Art. 57(2)-(5)). Candidates for membership on the board must be professionals in the field of public audiovisual broadcasting, have managerial skills, possess a degree of higher education and be citizens of Moldova with an active legal capacity and proficiency in the official language (Art. 58). A number of rules of incompatibility apply to Board members, such as a ban on membership of any party or political organisation, position within or ownership stake in a private broadcaster, post within the government or Parliament or post within the Council (Art. 59). The President and Deputy Presidents serve for five years and can be removed on a number of grounds, including a court order or a vote of two-thirds by the Council expressing lack of confidence in their performance (Art. 60).

The President's principal responsibilities are the general oversight of the public service broadcaster, implementation of its programme services, management of the budget and external representation (Art. 62). Every six months, he presents a "general study on the economic activities and the economic situation of the Company", after obtaining the consent of the two Deputy Presidents.

[27] The figure of 20% is simply indicative and is not presented as a best practice figure. What is appropriate will depend on a number of factors, including the development of the independent production sector and the number of other available channels.

The Executive Board manages the public service broadcaster's technical network, lays down internal rules and manages staff (Art. 63(1)). The Board is also responsible for drawing up various instruments, such as the Statute of the public service broadcaster, the organisational structure of its radio and TV stations, its development policies, its 'programme service', budget proposals and 'task notebook', all of which must be submitted to the Council for adoption (Art. 63(2)). The Executive Board may further decide in all situations of administrative nature which are not entrusted to the Council for resolution (Art. 63(3)). The 'task notebook' is a document drawn up annually which serves as the basis of the public service broadcaster's budget and lists all the different stations run by it and their activities, as well as providing an overview of the company's technical inventory, investment activity and staff expenses (Art. 64).

Analysis

We have three principal concerns in relation to the public service broadcaster's governance structure: first, the role of the Council; second, the division of responsibilities for management of the PSB; and third, the absence of a clear mechanism of accountability of the public service broadcaster to the public.

The first concern has already been discussed, in Section 0. As we explained there, ARTICLE 19 believes the Council should have no role with regard to the administration of the public service broadcaster, except pursuant to its ordinary oversight role over the broadcasting sector as a whole. Instead, we believe that Teleradio Moldova needs its own supervisory board, which could also exercise some of the powers of the Executive Board proposed in the Code. This body should be chosen in the same manner as is currently proposed in relation to the Council – as amended by our recommendations in section 3.3. The terms, minimum qualification requirements and rules of incompatibility applicable to members of the supervisory body should also mirror those for the Council, *mutatis mutandis* (candidates for PSB Board membership should of course be specifically knowledgeable in matters of public service broadcasting and should not concurrently serve on the Council, as the draft Code indeed currently provides). The supervisory body should run the public service broadcaster independently, without the need to seek authorisation for its decisions from any public body, although it should be accountable to the public (see below).

Our second concern is that the respective responsibilities of the supervisory body, the President and senior staff need to be clearly set out. We note that, as currently drafted, the responsibilities of the Executive Board and President under the Code are essentially two-fold: on the one hand ensuring that the public service broadcaster complies with its mandate, on the other hand managing the actual production and transmission of programmes. The President appears to be in charge of day-to-day running, while the Executive Board is in charge of management matters such as hiring and firing staff.

We believe the Code should lead to the creation of two clearly distinct bodies, one with responsibility to supervise the PSB's activities at a general level, the other with the responsibility for daily management. The new supervisory body whose creation we recommend would fulfil the former task; the Executive Board could be abolished and its oversight duties transferred to the supervisory body. This body should be in ultimate charge of the public service broadcaster and be accountable to public for ensuring that Teleradio Moldova fulfils its mandate. However, while it should be responsible for overall programme content, the supervisory body should have no powers to interfere directly with programming:

this should be the responsibility of the daily management, which could consist of the President and/or senior editorial staff. The supervisory body should have a hands-off approach to its governing role and respect the independence of the editorial staff. The President should then be given greater powers to run Teleradio Moldova, including hiring and firing of staff. This would ensure greater efficiency and avoid involvement of a large group of people in what essentially are everyday matters. In order to avoid any nepotism, however, the President and senior staff – defined as all those persons who report directly to the President – should be appointed by the supervisory body in an open and transparent manner. No person who serves as President or is a member of the staff should be permitted to hold a position on the supervisory body concurrently.

Third, we recommend that there should be far better mechanisms for accountability to the public.

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 at two levels: through the supervisory structure and through publication of the Council's Annual Report and the Executive Board's budget reports to parliament. We do not believe that this is sufficient. A range of measures may be implemented to ensure that the public service broadcaster is responsive to the wishes and concerns of viewers. Most importantly, Teleradio Moldova should be required to publish its own annual reports, reporting on all activities undertaken and, broadly, how it has fulfilled its public service mandate. Guidance on what might be included under the reporting duty can be gained from 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.

In addition, Teleradio Moldova should hold periodic meetings with members of the public, in all parts of the country. It should be required to conduct audience research, and generally be responsive to the needs of the people of Moldova. Furthermore, Teleradio Moldova should be required to establish an internal complaints procedure, based on a code of conduct covering such issues as accuracy, balance, and fairness. Monthly radio and television programmes could also be scheduled dedicated to discussing audience feedback – both positive and

negative. 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.

Recommendations:

- The Council should not be Teleradio Moldova's supervisory body. Instead, a separate supervisory body should be established whose tasks are integrated with that of the proposed Executive Board. The members of the new supervisory body should be appointed in an analogous manner to Council members. The supervisory body should be responsible for ensuring that Teleradio Moldova fulfils its mandate, but not be involved in the day-to-day running of the company or in day-to-day programming decisions. The supervisory body's responsibilities should include protecting the broadcaster's independence and ensuring accountability to the public.
- The President and senior staff should enjoy editorial independence. The President should be responsible for day-to-day management of the public service broadcaster and have the necessary powers in this regard, including to hire and fire staff.
- The President and senior staff should be appointed by the supervisory body.
- Measures should be taken to enhance Teleradio Moldova's accountability, including requiring it to produce an annual report, establish a complaints procedure and undertake audience research.

3.5.3. Funding

Article 66 sets out a broad set of rules concerning Teleradio Moldova's budget. It specifies that the public service broadcaster will have its own budget and will rely on five sources of income: an allocation from the State budget made by Parliament; donations and sponsorships; proceeds from the sale of the right to use and transmit the broadcaster's property; revenues from public events; and any other sources of income not inconsistent with the Code or any other law. The public service broadcaster's budget is drawn up by the Executive Board and presented to Parliament. The public service broadcaster must annually prepare a report for Parliament along with its "budget execution statements"; the report must also be published.

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.[28] 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. 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 enshrined as a constitutional principle.[29]

[28] See Guideline V of the Council of Europe Recommendation No. R (96), note 25 above.

[29] 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.

The draft 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 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, and we would hesitate to recommend it elsewhere.

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 draft Code should be amended to guarantee stable funding and allow for long-term planning on the part of Teleradio Moldova. Funding should not fluctuate from year to year; there must be a certain continuity. Ways of achieving this include defining the level of the subsidy as a percentage of the overall State budget or other forms of indexation, and providing for funding cycles that are longer than one year. We note that no duration for each budget period is currently defined in the Code and recommend somewhere in the range of 3 to 5 years, with a built-in annual rise to correct inflation. In order to provide for some flexibility, provision could be made for additional funding requests by the public service broadcaster to top-up the regular contribution if it proves necessary.

Given the importance of securing sufficient funding, we also recommend that consideration should be given to exploring additional funding mechanisms, which could be mixed with State funding. Specifically, mechanisms might be considered whereby public service broadcasting is paid partly through a contribution levied on other broadcasters, or through a flat fee paid by the public. In many countries, public service broadcasting is financed through a fee collected from all owners of a radio or television set. This arrangement has several advantages over other methods of funding: it is stable and secure; it reduces dependency on other sources of income; and it creates a bond between a public service broadcaster and its viewers and listeners. In many countries, public acceptance of the fee is surprisingly high. However, this is not to say that a broadcasting fee is the ideal funding source in all circumstances – particularly in transitional democracies, or countries with a weak economy, there is often little public appetite to pay directly for a service they tend to associate with the state broadcaster that existed under former, undemocratic regimes. An alternative might be to levy a fee on commercial broadcasters – practised in countries such as Finland. The advantage of this is that it allows for a stable source of funding that can grow together with income of commercial broadcasters. To the extent that it is combined with a ban on advertising on public

service broadcasters, it also removes the competition for advertising revenue that is often blamed for the 'dumbing down' of public service broadcasting.

Recommendations:

- The Code should guarantee stable and long-term funding over multi-year cycles.
- Other methods of funding should be explored in addition to the State subsidy, such as a through a viewers and listeners' fee or a fee levied on commercial broadcasters.

3.6. Community Broadcasting

It is increasingly being recognised in international law that the duty to promote media pluralism (see section 2.4 above) includes a duty to promote a three-tier broadcasting system, consisting not only of private and public service broadcasters, but also of community broadcasters.[30] By 'community broadcasting' we mean initiatives by small groups of individuals 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. Community broadcasters often benefit from lower broadcasting fees; and space is reserved for them in the national and regional frequency plans.

We believe community broadcasting could fulfil a particularly useful function in Moldova, given the large number of small ethnic and linguistic communities to which the country is home and doubts about the true independence of the existing public service broadcaster. 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 the smaller communities. Community broadcasting could ensure that these small communities have access to media that are truly their own.

We note that by failing to make any provision for community broadcasting, the 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 the means of communication. We therefore recommend that the Code should follow the example of many other democracies (Serbia and Montenegro,[31] Georgia,[32] the United Kingdom[33] and Ireland,[34]

[30] For explicit recognition of this emerging principle, see the relatively recently adopted *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 recent decision in *Asociación Mutual Carlos Mujica v. the State*, 1 September 2003.
[31] 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.
[32] 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.
[33] See Section 262 of the Communications Act 2003, and the Community Radio Order 2004.

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 provision stipulating that broadcast frequencies will be reserved for community broadcasting;
3) a modified 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.

The definition of community broadcasting should provide, at a minimum, that 1) community broadcasters are operated by non-governmental organisations or individuals and are independent of political or commercial interests; 2) community broadcasters operate on a not-for-profit basis; and 3) community broadcasters serve the interests of their 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 community, or the community of women or of children). For recent legislative examples, we refer to the United Kingdom's Community Radio Order 2004;[35] or, further afield but no less relevant, Article 2 of Botswana's Broadcasting Act 1998.[36]

Another issue which will need to be addressed by the draft 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 are not closed down as a result of the enactment of the Code, but that a careful review process is 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

[34] See http://www.dcmnr.gov.ie/files/BroadcastingFinal.doc.
[35] Which can be accessed at http://www.opsi.gov.uk/si/si2004/20041944.htm.
[36] Which can be accessed at http://www.bta.org.bw/pubs/Broadcasting%20act%20of%201998.pdf.

be provided, the number of such services shall be deemed to be the number being provided at the time this Act comes into force.

Recommendations:

- 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 by not-for-profit organisations for the benefit of their community, free from political or commercial interference.
- 'Community' should be defined both in regional terms and in terms of groups with shared interests.
- 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.

3.7. Rules Applicable to All Broadcasters

This final section considers Chapters I-III of the draft Code (with the exception of those parts already discussed in section 3.2), which set out general rules applicable to all broadcasters, whether private or public.

3.7.1. Content restrictions

The draft Code provides a number of content restrictions and prescriptive rules on how items relating to important or politically sensitive matters – such as elections – should be broadcast.

For example, Article 6 prohibits the broadcasting of programmes which incite to "hatred on grounds of race, religion, nationality, and gender." It also requires that a warning be displayed at the beginning of and during programmes which could be harmful to the development of minors, such as those containing pornography, gratuitous violence or licentious language, and prohibits broadcasting such programmes during prime time.

Article 7 requires all broadcasters to strive for pluralism in their programme services and provide "equitable, balanced and impartial" coverage. This provision also requires news reports to be accurate, to not twist reality, to draw on several sources and to be limited to one minute and thirty seconds.

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". Paragraph 3 states that "the court shall act in order to protect the rights of programme consumers if the holder of this right notifies it about any violations."

Analysis

In principle, many of the restrictions found in Chapters I-III appear to pursue legitimate aims. We are concerned, however, at the broad and vague language used in relation to some of

them, and at the apparent absence of any implementing code of conduct. For example, Article 6 employs vague terms such as "gratuitous violence". We are also concerned that a number of the terms used in the act, such as the concepts of fairness, balance and even accuracy, are unclear and need to be clarified.

Best practice in other countries is to clarify these matters in a binding code of conduct, drawn up and agreed upon by all stakeholders, which is enforced either by the broadcasters themselves, or by the broadcast regulator. Such a code helps ensure both that broadcasting respects community values and that broadcasters are able to avoid sanctions. Enforcement by a regulator or by broadcasters themselves, rather than through a court, ensures a low-threshold mechanism through which members of the public can complain. We recommend that the Code provides for a process leading to the adoption of a broadcasting code, and guarantees that this code will then be applied in enforcement proceedings before the Council.

Finally, the requirement in Article 7(4)(a) limiting news items to 1.5 minutes cannot be justified and we urge its deletion.

Recommendations:

- The Code should provide for the drafting of a code of conduct for the broadcasting sector, through a consultative process involving broadcasters and any other interested parties.
- The code of conduct should at a minimum elaborate on the meaning of all the content restrictions applicable to broadcasters under the Audiovisual Code, such as those found in Articles 6, 7 and 10.
- Items in news broadcasts should not be limited to 90 seconds.

3.7.2. Restrictions on ownership

Article 4(6) prohibits any legal or natural person from holding a stake of more than 20% in a broadcast outlet, unless that person is the outlet's founder. Article 4(7) states that foreign persons may not control a stake in a Moldovan broadcaster which would give them voting rights sufficient to block a decision.

Analysis

The principle of restricting foreign ownership is welcome, although its implementation must strike a proper balance between the need for foreign investment and the need to ensure Moldovan control over broadcasters based in the country. We also welcome the idea of laying down rules preventing excess concentration of ownership of broadcasters. However, we are concerned at the effectiveness of the current formulation: it would appear to be easily circumvented, for example by establishing multiple corporations, each of which is permitted to hold a 20% stake in a broadcaster. Moreover, this provision will not prevent one individual from founding multiple outlets and obtaining licences for each of them, thus gaining control of a large share of broadcasting in Moldova.

We recommend adopting a separate provision on concentration of ownership which, taking into account the media scene and the need for sufficient investment into the sector, prohibits an excessive concentration of ownership and cross-ownership (by which we mean ownership of both print and broadcast media). Such a provision could set outright limits – for example,

providing that no person may control more than one national broadcasting outlet and that no person who already controls a newspaper may obtain control over a radio or TV station; or it could formulate a prohibition through a setting maximum percentage of the national media market that any one person may control.

We also find the placement of these two provisions in Article 4 somewhat puzzling; we recommend moving them to a separate article.

Recommendations:

- Article 4(6) should be amended to guard effectively both against concentration of ownership within the broadcast sector and against cross-ownership in different types of media.

3.7.3. Miscellaneous provisions

Article 3 - European Audiovisual Works Broadcasting

According to this provision all broadcasters in Moldova must reserve 10% of their broadcast time for 'European audiovisual works', a term which is defined in Article 2(w) as encompassing works created in Moldova, the EU or a State Party to the *European Convention on Transfrontier Television*.[37]

Analysis

This provision may be based on Article 5 of the European Union's *Television Without Frontiers Directive*,[38] although uncertainty is caused by the different concepts of "radio broadcasters" and "local audiovisual program services". We note that the 10% minimum set in that provision refers to independent productions – meaning productions made by companies other than broadcasting companies. A much higher percentage is usually set for European audiovisual works generally: both the Directive,[39] which is not binding on Moldova, and the *Council of Europe Convention on Transfrontier Television*[40] require that a majority of broadcasting time is reserved for European audiovisual works (which would include Moldovan works).

Article 11 – Protection of Linguistic, Cultural and National Heritage

Article 11 sets out certain rules relating to the language of broadcasts and imposes requirements on the level of own and local 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 2 adds that stations operating in minority language areas must carry at least 20% content in Moldovan. Pursuant to paragraph 7, at least 80% of all programmes broadcast by a national station must consist of own or local production by 1 January 2010, while paragraph 8 requires all broadcasters to gradually increase the proportion of programme production in the Moldovan language, reaching 80% by the same date.

[37] Strasbourg, 5 May 1989, as amended according to the provisions of the Protocol (ETS No. 171) which entered into force, on 1 March 2002.
[38] Official Journal L 552, consolidated version, 30 July 1997.
[39] See Article 4(1).
[40] See Article 10(1).

Analysis

In general, we welcome the imposition of local content and language requirements, which should stimulate the audiovisual industry of Moldova. At the same time, we believe parts of Article 11 could have unwanted consequences or cannot realistically be complied with.

First, the requirement under paragraph 2 for broadcasters serving minority language speakers to carry 20% Moldovan content excludes the possibility of having genuine community radio stations for such groups. We believe this is an unnecessary measure, given that all citizens of Moldova will have ample exposure to other broadcasts in the official language. Second, the requirement to achieve 80% domestic content by 2010 seems unrealistic. Generating such a volume of local production would be very expensive and we doubt that the small Moldovan market is capable of supporting such an output at an acceptable level of quality. Third and lastly, there is an apparent inconsistency between paragraphs 8 and 2, in that the former states that own or local production in Moldovan must make up at least 80% of all broadcasts by 1 January 2010, whereas the latter imposes the 'not less than 20%' rule for broadcasters in minority language regions.

Articles 14-17 – Protection of Sources, Protection of Journalists, Right of Reply

Article 14 guarantees the important right of journalists to protect the confidentiality of their sources, subject to certain limited restrictions. Article 15 goes on to require that the authorities offer protection to individual journalists and the premises and buildings of broadcasters in cases where there is a threat which endangers their activities. It also stipulates that all searches and seizures of broadcasters' premises require a basis in law. Article 17 deals with the right of correction and reply, guaranteeing that anyone who considers his or her rights or reputation has been harmed by broadcast is entitled to seek a rectification or response.

Analysis

These three provisions are largely compatible with international standards. Our principal concern in relation to their substance is that Article 15(3) does not go far enough in offering protection against searches and seizures on journalistic premises. In the case of *Roemens and Schmit v. Luxembourg*, the European Court of Human Rights stressed that:

> [E]ven if unproductive, a search conducted with a view to uncover a journalist's source is a more drastic measure than an order to divulge the source's identity. This is because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist.[41]

Article 15(3) 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, in line with the ECHR's ruling in *Roemens*.

The reason we discuss Articles 14-17 jointly is that we have a larger concern about these provisions. While they are very welcome, they establish principles which should apply to all journalists and all media, not only those in the broadcasting field, and should consequently be

[41] *Roemens Schmit v. Luxembourg*, 25 February 2003, Application No. 51772/99 (European Court of Human Rights), para. 57; *Goodwin v. the United Kingdom*, 27 March 1996, Application No. 17488/90.

dealt with in laws of general application, such as the code of criminal procedure and the civil code. Duplicating these provisions in the Audiovisual Code may lead to a contradiction with standards in those and other laws and is not the most logical organisation of the various pieces of legislation.

Recommendations:

- Broadcasters should be required to devote the majority of their broadcast time to European audiovisual works.
- Article 11(2) should be deleted.
- The percentage in Article 11(7) should be reduced to below 50%.
- Articles 14-17 should be transferred to appropriate laws of general application, such as the code of criminal procedure and the civil code.
- The protection against search and seizure on broadcasters' premises under Article 15(3) should be extended to cover all types of buildings where journalistic work product is stored, and should be strengthened in line with the European Court of Human Right's ruling in *Roemens and Schmit v. Luxembourg.*