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

Analysis of The Audiovisual Code of the Republic of Moldova, The Regulation on the Procedure and Requirements for granting Broadcasting Licences and Re-broadcasting Authorisations, and The Statute of the Coordinating Council of the Audiovisual.

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Background
This analysis deals with the Audiovisual Code of the Republic of Moldova, No. 260, adopted on 27 July 2006 and published in Monitorul Oficial No. 131 of 18 August 2006 article 679 in English translation provided by the OSCE. In addition the analysis looks at the Regulation on the Procedure and Requirements for granting Broadcasting Licences and Re-broadcasting Authorisations and the Statute of the Coordinating Council of the Audiovisual.

The expert has previously analysed the draft Moldovan Audiovisual Code in a report of 7 April 2006 as well as drafted - on 10 May 2006 - a suggested outline for a Moldovan Audiovisual Code, based on the draft code as well as other drafts and reviews put forward by different non-governmental organisations, like the Moldovan Association APEL, the Article XIX comments to the draft Code and Council of Europe comments to APEL drafts. The expert also participated in a seminar organised by the Council of Europe in Chisinau on 25-26 April 2006 to discuss the draft Code. The Council of Europe has also in May 2006 published an analysis of the draft Code. The Regulation and Statute have not been analysed by the expert earlier. The comments in this report related to the Code refer to the analysis and suggestions made earlier and highlights where suggestions made have been taken into account.

I. The Audiovisual Code

Introduction
The Code takes into account a number of the suggestions made in the previous reports. The main points of these suggestions can be summarised as follows:

- The need for a proper board for the public service broadcaster
- The need to reduce the control and influence of the regulator over the work of the public service broadcaster
- The need to have a more de-politicised appointment process for the regulator
- The excessive attention to re-broadcasting and special procedures for this
- Stipulations in the law of rights and freedoms that should follow from the constitution and general freedoms and not be set out in detail, with the risk that this may have a limiting effect

- The need to add provisions on appeals

These comments have been taken into account in the Code in the following manner:

- The requirement that there should be a proper board for the public service broadcaster has been met in the new Code
- The Regulator still has certain powers over the public service broadcaster, but these are more in line with European practice if properly interpreted and implemented
- The appointment process of the regulator has been improved
- The provisions on re-broadcasting have been clarified to some extent but remain mainly unchanged
- The stipulations on rights and freedoms have been clarified to some extent but mainly remain unchanged
- Provisions on appeals have been added in line with comments made
- In addition, most other specific comments on various issues have been taken into account and improvements made to the Code

General issues and Structure of the law

It was stated in the previous reports that the Audiovisual Code in many respects meets European requirements albeit with certain shortcomings. Some such shortcomings remain but generally improvements have been made more in line with European standards, as is pointed out in detail below in the Article-by-Article comments. This means that the Code is even more in line with European standards.

The Code to a large extent follows the same structure as the draft, although as suggested the division into Parts One and Two has been deleted. As proposed before, it would have been more logical to have the section on setting up the regulator before detailing some of its tasks in the Oversight and Sanctions chapter, but the order is not of major significance.

The comments that were made previously as well as discussed at the seminar in April, how some provisions in the law stipulate rights and freedoms that should be self-evident and based on the constitution with no need for special mention, have not been taken into account. This probably has to do with very different legislative style as a legacy of the authoritarian system, when anything that is allowed must be spelled out, whereas in democratic rule of law states things are not presumed to be illegal just because they are not explicit in the law - rather the other way around. It would in the opinion of this expert still be better to delete provisions in the law on rights that cannot normally be enforced in a court of law or through any other legal means and where the effect of their inclusion in a law thus does not contribute any real value.

The Code does not mention anything specific about new technologies such as digitalisation. It varies between countries if digitalisation is in a special law or in the general broadcasting and/or telecommunications law. In any case, it is an issue that Moldova should start preparing for and it is important that the matter is looked at from both the technical and the broadcasting content viewpoint.

Licensing issues

The distinction between a technical licence and the broadcasting licence is still in the law. It is better to have just one licence with different parts. In any case, the applicant should not have to make several applications but authorities should coordinate all parts of a licence. There have been improvements in the Code, read together with the Regulation, but eventually

merging the licences into one should be considered. Not least digitalisation may mean new needs for cooperation in the licensing area.

The law and the Regulation are based on submission of documents in hard copy, personal collection of them and similar. It should in a near future also in Moldova be possible to make applications and similar through electronic means. It would have been suitable to make allowance for such electronic submission already now, in the Code and Regulation. This also influences the provisions on record-keeping, proof of submission, and similar.

Broadcasting policy

An Audiovisual Code should ideally contain an article stating that a broadcasting policy shall be made. Such a policy would normally be developed by the government through the responsible ministry in cooperation with the regulatory agency, but it is also possible to have the regulatory agency doing it. Such a policy gives a possibility to spell out aims for broadcasting in a different manner than what is suitable for a law. Rights of programme consumers can be taken into account in such a policy, which can be made explicit in the article in the law that forms the basis for policy formulation. The broadcasting policy may also contain rules on such things as community broadcasting and other types of broadcasting, explicitly creating a pluralistic broadcasting sector. Currently, explicit provisions on plurality are lacking or are not clear.

There is a provision on prohibition of censorship in the Code (Article 8), which is good. It could be in an even more prominent place but as the first Article of the Code in this new version stresses freedom of expression as well as editorial independence, these pronouncements must be seen to be in line with European practice.

As was pointed out in the earlier reports, there should not be frequencies given to only re-broadcasting except in exceptional cases. In functioning European broadcasting markets, re-broadcasting tends to be a smaller part of the programme offering of broadcasters. The applicants for a licence can state in their programme proposals that they intend to have some re-broadcasting and show the necessary evidence for this. There is thus no need for a special procedure for re-broadcasting. It is known that there is a lot of re-broadcasting in Moldova, but this should not remain a permanent feature of the broadcasting sector once it is better established. By setting out special procedures for re-broadcasting, it gives a signal as if this is and will remain a major part of the broadcasting market. The link between re-broadcasting and broadcasting through means such as cable that do not use frequency resources is not clear.

Code of Conduct

The Audiovisual Code contains certain programme principles, which are good. Such principles can be set out in more detail in a broadcasting code of conduct, elaborated by the regulatory agency. It is very good that reference is made to such a Code in the law. It should be one of the main first tasks of the regulator to elaborate and issue a Code of Conduct. This will then provide the needed additional details on programme standards and related matters. Through such a Code an added mechanism is obtained to ensure that broadcasting meet European standards and that the regulator properly ensures this.

Ownership

One element still missing from the law – even if there has been an improvement from the draft - is a clear stipulation on ownership restrictions. The provision should – based on what restrictions are desired- state all or some of the following:

- That ownership is defined as having more than a certain set percentage (10% for example) of the share capital/ownership (such a definition of what ownership *must* be included but the exact definition can vary)
- That one physical or legal person cannot own more than [one/two/three] broadcasters, either television or radio, covering the same area
- That a physical or legal person that owns print media cannot also own broadcast media [or at least not more than on broadcast media]
- If there is a need to limit foreign ownership, the law should mention that a foreign physical or legal person cannot own more than a set percentage of a television or radio station

Although some of these provisions are included, they are not very specific and leave a lot of room for interpretation. The provisions should be clear and suitable for the media landscape in Moldova, thus being neither too restrictive so as not to stifle the broadcasting market, nor too permissive so that there is no diversity.

Appeals

The Code in the new version includes provisions on appeal, which is an important improvement. It is important is that there is a real possibility to appeal in line with Article 6 of the European Convention on Human Rights. The Code is also clearer on sanctions, both in the sense that the gradual nature of sanctions and the fact that withdrawal of the licence is only the ultimate sanction is now spelled out and in that the violations for which sanctions can be given are clearly mentioned.

Article-by-Article comments to the Code

Chapter I General Provisions

Article 1 – The purpose and scope of the law

The Code as compared with the draft contains more explicit mention of free formation of opinion, editorial independence and freedom of expression, which is positive.

Article 2 – Definitions

The definitions have stayed mainly the same but some small amendments have been made, talking into account proposals made. This includes that the definition on European Audiovisual Works combined with the Article on such works is no longer confusing and that "internet" has been deleted from the definition of audiovisual communication in Article 2 h), so that there is no danger that the Code is presumed to apply to Internet content. A remaining comment is that the Coordinating Council of the Audiovisual could have been included in the definitions as could the MMDS technology – generally, any specific terms used in the law should be defined. One improvement throughout the Code (but that presumably mainly was a translation error in the draft Code) is that the reference to broadcasters is no longer restricted to *radio* broadcasters.

The definition of the technical licence is unnecessarily complex and may be confusing. The definition refers to that a broadcasting licence obtained on a competitive basis gives the right to a technical licence. This appears to indicate that there is an evaluation of how a broadcasting licence was obtained before deciding to issue a technical one. As stated elsewhere, this expert does not support the idea of separate technical and other licences, but even if this is maintained and as is shown elsewhere in the Code, there should be no separate *evaluation* of the broadcast licence on the part of the body issuing the technical one – only *verification* that a proper broadcast licence has been obtained.

Article 3 – Broadcasting European audiovisual works
This Article has been amended, unclarities in the definition have been abolished and the provision follows closely the Transfrontier Television Convention and the related EU Directives. This is in line with what was suggested in the previous report. The Article allows for a staged introduction of provisions on European Audiovisual Works, linked to future EU Membership. The provision on the share of European works before EU accession (point 8) is somewhat vague, stating only that there should be a significant share. However, this is sufficient as the regulator shall supervise the provisions, so clearer rules can be issued in due course by the regulator.

Article 4 - Broadcaster operating under the legislation of the Republic of Moldova
The main part of the Article is in line with the Transfrontier Television Convention and small adjustments have brought it more in line with the Convention definitions. The Article has further been improved following suggestions in the earlier reports as the provisions on ownership have been taken out. The ownership provisions are however still not prominent enough as the content is still rather vague and the placing of the provisions (in Article 7) not very visible. However, as for Article 4, it now means this Article is a restatement of the provisions of the Transfrontier Convention, which is a correct component of an audiovisual code. The only remark is that the reference to Article 40 in point 5 is somewhat confusing as that article does not appear to contain the kind of derogations that are mentioned.

Article 5 – Classification of broadcasters
This Article has been improved following the suggestions made, including all broadcasters and not just radio and making a distinction based on coverage.

Chapter II Audiovisual communication principles
Article 6 – Guaranteeing morality and protecting minors
This Article has been amended slightly, taking into consideration the comments made in the previous report, so that the provisions are now clear. The Article is in line with European practice.

Article 7 – Political and Social Balance and Pluralism
Also this provision has been amended and refers to the regulator as well as the election body working out the detail of rules for media in election periods. Detailed rules according to the election law can be issued by the election commission or the regulatory agency or in cooperation between them. This will be necessary if e.g. there will be a requirement for certain broadcasters to have election broadcasts. The requirement of equal broadcast time can be onerous for broadcasters especially if there are many political parties, so more substantial rules would be needed, but the basic principle of non-discrimination in this Article is good.

Also otherwise the new Article takes into account comments made, in that the time limit for news items has been taken out. The term in the English translation “conflict situations” for when multiple sources should be used is perhaps not so clear but the presumed interpretation of the provision is still understandable.

Provisions on ownership have been added as point 5 to the Article. The basic aim of the provision is good but there is a need in the Code (or possibly in regulations issued by the Regulator) for more detailed ownership rules, as stressed above.

Article 8 – Editorial independence and freedom
The Article is largely unchanged from the draft. Article 8 (4) when it talks of the interference now states that it refers to individuals outside of the broadcaster, as suggested in the previous report. The reference to self-regulation has been taken out - it does not have to be mentioned but it is hoped the deletion does not mean that self-regulation will not be promoted.

Article 9 – Free program service reception
It was suggested in the previous commentary that this Article should be deleted. The content has been improved in that the problem with the original Article from the enforcement viewpoint was that it contained issues that could not be upheld in a legal procedure. The current Article is more specialised and refers to what service providers must offer and prevents owners of dwellings to prevent reception. Even so, the Article may be problematic and its content may be more suitable for a consumer protection law than a broadcasting one. A house owner may legitimately prevent construction of some antennas or similar and this should not risk being against the audiovisual law.

Article 10 – The rights of the program consumer
This Article should be deleted as it contains issues that cannot be upheld in a legal procedure in the way that is proposed (as elaborated also in the previous analysis of the draft code). It is very difficult to see how a reasonable legal case can be made based on the right to receive the kind of information the Article stipulates and if this Article would be called upon in a court, this may transfer elements of the regulator's work to the Courts.

Article 11 – Protection of Linguistic, Cultural and National Heritage
The Article has only been amended slightly. The percentages are high even if there is a period of time for adjustment, especially if subtitled programmes are not allowed as part of the share broadcast in the official language. The share for local production is also high.

In line with what was suggested in the previous comments, Teleradio Gagauzia that is mentioned as a special case is explained in the Code, in Article 65.

It is however still unclear what applies in areas where there are large national minorities but they are not in majority in that area. The difference between Article 11(1) and Article 11(9) is very important even if the percentage difference between groups may only be small in the respective areas covered by the different paragraphs. The regulator should make more detailed rules for how to obtain the best division of allocated frequencies for different languages.

One of the comments in the earlier report was that the priority intended in the Article for broadcasts in the official language was vague. The equivalent provision now clearly mentions re-broadcasting, which makes it clear.

Article 12 - Protection of national information space
The content of the Article, stating that the frequency spectrum is a national resource, is quite common in broadcasting or telecommunications legislation, but the title as well as the place in the Code of this particular Article is somewhat strange. It has not been changed as was suggested.

Article 13 – Access of programme consumers to events of major importance

This is in line with European practice like the Transfrontier Television Convention and EBU provisions. The list of events is now more similar to that of many European countries. What could have been added is the right to have extracts from broadcasts. A new feature compared to the draft is the inclusion about sign language – this is good.

Article 14 – Ensuring confidentiality to information sources
This Article is good and in line with international standards. Confidentiality for sources should not just apply in the context of broadcasting, but if such general provisions do not exist in Moldova, it is better to have it in this Code than not at all. The change compared with the draft is that it is now not stated that the journalist assumes responsibility for the correctness of the information. This is an improvement as that provision could be misunderstood. It is very important that this Article is interpreted by Courts in a proper manner so that the court order for disclosure of a source can really only be made in exceptional cases.

Article 15 – Protection of journalists
It was suggested in the previous comments that this Article should be deleted and the expert is still of that opinion. The Article has been improved in line with suggestions made as there is no mention of searching premises and as a new paragraph on coercion has been added. However, the expert would still prefer the Article to be taken out or in any case that it is monitored how it is used - if it is made reference to by authorities, in which context.

Article 16 – The right to reply, correction and equivalent remedies
The principle is good and generally in line with international instruments, as was pointed out also in previous reports. What is lacking is a provision that a reply can be shortened or in special circumstances altered before the broadcasting of it. It is possible to issue guidelines on how replies shall be handled, which can be a task for the regulator. A possible defamation process should take the provision of right of reply into consideration – this is something that court practice can establish even if it is not mentioned explicitly in the law.

Article 17 – Broadcasting state of emergency announcements
In this Article, the amendments proposed in the analyses have been made and the Article now refers to serious threats and mentions who the information requests may come from.

Article 18 – Observing the copyright and related rights
This Article has been improved in line with suggestions made. It is good that it mentions copyright obligations with reference to special legislation and that provisions that appeared to indicate that there could be discrepancies between broadcasting and copyright legislation have been taken out. Other confusing provisions on users of broadcasting have also been deleted in line with the proposals made.

Chapter III Advertising, teleshopping and sponsorship
Article 19 – Advertising and Teleshopping
This is a long and detailed Article that is broadly in line with European standards and some small issues may be due to translation. The statement that advertising time "represents their commercial product" is still unclear and Article 19 (6)g must presumably mean that "immoral" behaviour shall not be encouraged. Paragraph 3 is also a bit unclear. The addition that broadcasters bear editorial responsibility for advertising and teleshopping content is good. It is not clear if there can be teleshopping of pharmaceutical products and what in that case applies.

Article 20 – Requirements to sponsored programmes
In this Article suggestions made have been followed, namely that the name and trademark of the sponsor must be shown just before and after the programme and clarification of what types of news and similar programmes that may not be sponsored.

Article 21 – Conditions for broadcasting commercials and teleshopping materials
Some amendments have been made in the Article in line with the comments made to clarify what is not applicable to radio and what kind of programmes are referred to in different sections as well as how often they can be interrupted. (The reference in paragraph 8 to paragraph 3 appears to be wrong.)

Article 22 – Amount of advertising and teleshopping
This is in line with European standards.

Chapter IV Licences
Article 23 – Broadcasting licence
This Article makes a distinction between licenses for users of frequencies and general authorisations for others, which is good and in line with modern European practice. Generally the Article has been amended in line with recommendations. Conditions for licences in the law are now clearer and this combined with the regulation, means that licensing conditions are well presented and contain the kind of elements that should be taken into account in best European practice. It is now important to see that the regulator manages to also apply the provisions in this correct manner.

The mention of priority for own production and European works (paragraph 3(d)) risks creating a double obligation, as specific provisions on this are in the law. Paragraph 6 (h) should presumably be integrated in point (g).

As mentioned also in the previous report, it is positive that Article 23(11) mentions the Public Service Broadcasting. Such a broadcaster can either have a licence issued by the regulator with the distinction that it has the right to such a licence without a contest or it can be stated that it does not need to have a licence as it operates based on the law. As the regulatory agency is to have some control also over the public broadcaster it is good that it has a licence even if this will have to look different from those of private broadcasters.

The addition of the right to appeal is very important and in line with comments made.

The Code as well as the Regulation make reference to licence fees, but there is no clear stipulation in the Code on such fees. There should be such mention, with details of the fee structure in a regulation. There needs to be some legal basis for such a fee and it fits best in this law.

Article 24 – Broadcasting licence extension
Even if the intention is presumably to allow pluralism and the chance for change in the broadcasting market, which is good, it is rather strict to only allow two rather short periods of broadcast licensing after one-another, an this may act as a deterrence for investment in the broadcasting sector. If a broadcaster follows the rules, it should be allowed to operate also for a longer period. As the licence period is not very long, three periods may be permitted.

Article 25 – Broadcasting licence features

The additions made, referring e.g. to the Code of Conduct, are good. This is in line with general comments made. The Article is now well in line with European standards. The possibilities for amendments are fine provided they are not interpreted too widely by the regulator, as changes to licences issued should be exceptions.

Article 26 – Broadcasting licence transfer
There are no problems with this Article.

Article 27 – Broadcasting licence withdrawal
It is important that it is clear that withdrawal should not be possible too easily and the amendments made are good and to some extent in line with suggestions made. As for the technical licence withdrawal, see the specific remarks elsewhere about how different technical and other aspects of the licence should be seen as one licence. It is good to add explicitly that withdrawal of a licence is the last resort and that this is done by the regulator.

Article 28 - Re-broadcasting authorisation
As was explained in the previous reports and above, in a functioning broadcast market, extensive re-broadcasting on terrestrial frequencies without any own programming should normally not be allowed. Re-broadcasting can make up part of a broadcaster's programme offering but it would in that case be evaluated together with other aspects of the proposed programming and be part of the evaluation background for a broadcast licence. There appears to be a special situation in Moldova with very extensive re-broadcasting and it is accepted that it may take time to alter this situation. This should however not be an excuse to cement such a situation for the future. It would be better not to handle re-broadcasting separately but to have the provisions included as conditions for a licence in the sense that a broadcaster may wish to do some re-broadcasting as well as produce own broadcasts. The regulatory agency will then consider each application on its merits, be they for only re-broadcasting or a mixture and there will be just one unified licence.

As for the addition to this Article as compared with the draft, that the agreement with the producer has to be shown, this is positive.

Article 29 – Programme services re-broadcasting conditions
If provisions on re-broadcasting are included, these specific conditions are acceptable. Paragraph 5 appears to include the must-carry obligation that is a European norm for e.g. cable operators. This is good but the relationship between re-broadcasting and cable broadcasters (that are not specifically regulated) is not clear in the Code.

Article 30 – Free Re-broadcasting
A broadcaster (apart from cable) would need to have a permission of some sort at least for frequency use. For cross-border spill-over of broadcasts from another country, the handling of this is part of management of the frequency spectrum. It is possible to make agreements on this but that would not be re-broadcasting in the sense this Article appears to infer. It is thus difficult to see what is free re-broadcasting in the way apparently intended in this Article. It may just refer to the rights under the Transfrontier Convention, in which case it is fine.

Article 31 - Technical licence granting
One of the main comments to the Code is that as it is easier for the user and less bureaucratic – and thus also less costly and complicated – it is preferable to have just one licence with different parts. The applicant then only has to go to one place to get the licence and the

licence-giving body automatically sees to the coherence and coordination of the different parts of the licence. A licence should incorporate all different aspects. The applicant should only have to submit one application and the authorities themselves should between them elaborate the system for securing the different types of content. The provisions are somewhat improved in that the applications go to the broadcast regulator and it should be possible based on the Code and on the Regulation to set up good coordination, but even so, a unified licence would be better.

Article 32 – Supervision of technical parameters
Article 33 – Amending the technical licence
Article 34 – Technical licence withdrawal
Similar considerations on cooperation between different bodies involved apply here. The time limits for licence withdrawal when broadcasting stops are different for broadcasting and technical licence.

Article 35 – Strategy for national territorial coverage with audiovisual program services and the National Plan for land radio-electric frequency distribution
Article 36 – National Plan for land radio-electric frequency distribution
It is important that there is planning to ensure that broadcasting (and especially public broadcasting) reaches the entire population. The coverage of population is what is essential, not that of territory. The cooperation between the broadcast regulator and the telecommunications regulator – as foreseen here – is essential. The amount of frequencies for different services has to be realistic related to the resources of the country: it is difficult for this expert to have views on whether what is proposed here is realistic. Generally, the content of the Articles is fine and their implementation has to be carefully observed.

Chapter V Oversight and sanctions
Article 37 – Supervision and oversight activity
A regulator shall perform its control tasks by monitoring programmes as well as reacting to complaints from the public. With time the process should be mainly complaints driven, whereas some more ex officio activities may be needed early on to ensure that the broadcasting standards are understood and implemented. Complaints should normally come from private subjects; public authorities should only in exceptional circumstances have to react to the content of broadcasts. The Article (or the translation) has been slightly amended to make it clearer, regarding periods for complaints review.

Article 38 - Sanctions
This Article has been amended and improved in line with comments made. It now identifies and lists offences and stipulates clearly how sanctions are to be applied gradually. (References in paragraph 2(f) may be partly wrong.) The statement of a possibility to forward cases to the Court is still in the Code. It must be stressed that this is only in the rare cases where some criminal offence unrelated to this law has been committed that there would be a reason to send a case to court. Normally, the regulator deals with offences. The explicit provision on the regulator working with the broadcasters is very positive. The added provisions on appeals, in line with comments made, are also good.

Chapter VI Coordinating Council of the Audiovisual
Article 39 – The Status of the coordinating council of the audiovisual

The clear reference to the autonomy of the regulator is good, clearer in the new Code. Even so, stressing even more explicitly its independence, transparency and non-discrimination would be in line with what is common in European legislation.

Article 40 – Functions of the Coordinating Council of the Audiovisual
Clarifications made in line with the comments are partly due to change of the terminology used and/or translation - generally the Article reads better and is easier to understand.

One of the key objections to the previous draft was that the role of the Council in relation to the public broadcaster was much too big. Here important changes have been made. The regulator still has powers in relation to the public broadcaster, but to some extent this is only positive as it allows the regulator to have a good overview of the entire broadcasting sector. The provisions as they now stand should be acceptable, provided the interpretation made of them by the regulator is in line with European practice.

Other changes to the Article are also improvements made in line with the suggestions, linked to entry into force, publication and appeals. One important element is the mention of a Code of Conduct to be elaborated.

Article 41 – Responsibilities of the Coordinating Council of the Audiovisual
As suggested before, it would have been better to merge responsibilities and functions and/or place responsibilities before functions to make sure it is clear the functions implement the responsibilities. This is however more of a stylistic comment.

Article 42 – Membership of the Coordinating Council of the Audiovisual
The system for appointment of the Council has been amended in line with comments made based on best European practice. This requires that the members should be independent and not political appointees. In the system now selected there are attempts to safeguard this by allowing for proposals from different bodies, representing different interests. It is not very clear how the invitation for candidates will be made, but even so, the basic idea of the appointment process is now much more in line with best European practice. As for the provision on no criminal record, this could be limited to more serious crimes but this may be seen as being inherent in the expression as smaller offences may not be seen as leading to a criminal record.

Article 43 – The members of the coordinating council of the audiovisual
The system has been adjusted in line with comments made so that appointments are staggered and not all members are changed at the same time.

As for dismissal, it must be clearly understood that members can only be dismissed on grounds clearly set out in law and following a special procedure. Although improved, the grounds for dismissal are still not very strict and there is no provision about the procedure. Deprivation of citizenship cannot normally happen in democratic societies other than by the active actions of the person concerned and the need to have this as a special ground for dismissal is thus not suitable. Both convictions by court and health reasons must be restricted to only serious cases, which has been inserted for the health ground but not for the conviction.

The status of civil servants of the members is something that varies between European countries, so even if it may be even better from the point of view of independence to not have this status, such status is not in itself against European practice. It is more common that

members of the Council are not full or part time employees, but rather perform the work as a board and that the staff, lead by a Chief Executive Officer, carry out daily work.

Article 44 – Incompatibilities with the position of member of the Coordinating Council of the Audiovisual

The political independence covers any affiliation with a political party – it may be sufficient that the person cannot hold any elected or appointed position in a party, but a wider ban is better than a too narrow one especially in a situation where there may be a risk of attempts of political interference. As for the ban on any financial benefits from the membership, it is not clear how this is to be read in regard to any pay for the work performed, but the Article can be interpreted to mean any financial benefit apart from such ordinary pay.

Article 45 – President of the Coordinating Council of the Audiovisual

The statement that this person should have a position similar to that of a Deputy Minister - although it is not totally clear what is meant - is an unfortunate stipulation, as it appears to show that the president holds an official government position. Otherwise the comments made have been taken into account, most significantly regarding the role of the regulator vis-à-vis the public broadcaster but also a smaller comment on the time to establish a new Council. The duties of the President are similar to what often is carried out by a Chief Executive Officer with the Council president being more of a non-executive Chairman. It is however possible to have different models, provided basic demands for independence as well as efficient functioning of the body are met.

Article 46 – Remuneration of the members of the Coordinating Council of the Audiovisual

In line with comments made, this Code now stipulates about the remuneration although the provision is not clear as the salary of the Council President is not known. (This also means that the provision does not show if the positions are full-time or not.)

Article 47 – The fund of the Coordinating Council of the Audiovisual

Here there may be a translation issue, as the Article refers to funding and not a specific fund. Comments about how the funding mechanism should contribute to the independence of the agency so more independent funding from licence fees is better than relying on only the state budget have been taken into account – although as said elsewhere, the Code still lacks detail on licence fees. The addition of words about a need for sufficient funding is good.

Article 48 – Organisation and operation of the Coordinating Council of the Audiovisual

The Article has been improved and takes into account some of the comments made. Openness and transparency of the work of the Council is positive but as it will deal with individual cases where e.g. business secrets or personal matters come up it is not suitable that all its sessions in their entirety are open to the public. There may be certain open sessions as well as a procedure for public rule-making but a possibility to close parts of the session. The details of this should be worked out by the Council. For the work on the frequency plan, presumably also the frequency authority would take part.

Article 49 – Supervision and control of the Activity of the Coordinating Council of the Audiovisual

The Code lacks any detail on what the report to Parliament should include. This must be worked out between the regulator and the Parliament so that it will be clear and most useful for both parties.

Chapter VII Public Broadcasters

Article 50 – Legal status of the national public audiovisual institution – the company "Teleradio Moldova"

It is still unclear in the Code how the transformation from the currently existing broadcaster should take place, if the new one is to be an entirely new entity or the successor of an existing one. Such provisions must exist somewhere, even if not necessarily in this law (although their inclusion in the transitional provisions would have been good). Otherwise this Article is now good including such matters as coverage of the entire population (as suggested).

Article 51 – The Company's functions

According to comments made, the term "historical truth" has been deleted and the formulation is now better. Children's programmes have been mentioned as well as other provisions on the kind of programming that the public broadcaster should have – in line with comments made. The possibility for regional public broadcasters is also mentioned as suggested. The previous article on "Main requirements for programme services of the Company" has - as suggested - been deleted.

Article 52 – Editorial independence

This Article has been amended in line with proposals made and is improved. It stresses editorial independence and refers to adoption of more detail in regulations.

Article 53 – Advertising, teleshopping and sponsorship

It was suggested in previous comments that in order to ensure fair competition, the amount of advertising time on the public broadcaster could be more limited than on the private ones. This suggestion has not been adopted although teleshopping is prohibited, as suggested.

Article 54 – The activity of the National Public Broadcaster

The relationship between different Articles and why tasks and duties are set out in so many different Articles is still somewhat difficult to see even if the content has been made clearer in many places. What kind of advertising activities that the broadcaster could do is not fully clear and the reason for provisions on the foreign trade operations is difficult to see as limitations on such trade operations – as was common in the Soviet days – should generally now disappear and the operations be part of normal business activity.

The important improvement following suggestions made is that what amounted to subordination to the regulator has been deleted.

Article 55 – Company management

Article 56 – Membership of the Supervisory Board

One of the key remarks to the draft law was that there was no independent board of the public broadcaster and the regulator had a much too large role. A public broadcaster must have a real board, consisting of independent people with knowledge in the area. This has now been included in the Code with the creation of the Supervisory Board.

The open and transparent contest for finding board members is good and attempts are made to ensure competence and diversity. The procedure for finding candidates is very good (and a similar procedure could be stipulated also for the regulator). Only details may be needed in addition, such as if members can be re-appointed and that the remuneration provisions should

be clearer. The section 9 on remuneration appears to contradict itself (the different percentages).

Article 57 – Requirements and incompatibilities
The Article is good, it is a new Article. Comments made above about seriousness of criminal record and extent of political involvement apply also here.

Article 58 – Supervisory Board Functions
This is a new Article that meets the requirements that were set out in the previous comments on what an organ of a public service broadcaster shall look like and do.

Article 59 – Vacancy of the position of member of the Supervisory Board
This is a new Article that is basically good, but the comments made above about loss of citizenship and court decision apply also here.

Article 60 – President of the company
Article 61 – Radio director and television director
These new Articles are good. The functions are adequate for the positions. More detailed provisions will be worked out as stated in the Article.

Article 62 – Work plan
This Article has been somewhat amended in line with proposals made and the terminology changed. The approval by the Supervisory Board is good.

Article 63 – The company's property
The relationship of the new entity to any pre-existing entity and questions of succession to property must be made clear. Apart from that, the Article is now improved as the role to approve actions is given to the Supervisory Board as suggested.

Article 64 – The budget of the company
The Article has been somewhat changed in line with suggestions made. The addition of words on guarantee of adequate funding is good. There is still no proposal for a subscription fee paid by users, which is a common funding mechanism. The Article does now mention advertising income. Other additions on development of the budget are also good.

Article 65 – Regional public broadcasters
This new Article is in line with suggestions made, both in that it allows for regional broadcasters and in that it explains Teleradio Gagauzia.

Chapter VIII Private broadcasters
Article 66 – Establishment and activity of public broadcasters
It appears the heading is still wrong in that it states "public" but it is obvious from the content that what is meant is private. The content is improved and the limits on who can start broadcasters are good. How private broadcasters finance their activities is not relevant provided it is not against any concentration rules so Article 67(5) is unnecessary as pointed out. As stated elsewhere in this report, ownership restrictions to avoid concentration should be more explicit and clear.

Proposals especially by Article XIX that there should be provisions in the Code to encourage small community broadcasters have not been included.

Chapter IX Final and Transitional Provisions

Article 67

Article 68

As said, it is not evident what the relationship with the existing public broadcaster(s) is. Other than this, what has been changed is some of the timelines and this is in line with suggestions made. Another improvement is the explicit mention of a Code of Conduct.

II. Regulation on the Procedure and Requirements for Granting Broadcasting Licences and Re-broadcasting Authorisations

This Regulation together with the Code provides detailed provisions on what is needed for a licence or other authorisation. This is in line with European requirements of transparency and legal certainty. The amount of detail as well as the content of such detail are mainly in line with European requirements and the comments made here are mainly smaller issue and suggestions for future amendments or additions.

Article-by-article comments to the Regulation

Article 2 - Definitions

Most of the definitions are the same as those in the law, so comments made apply also here. This is also true of the general comment that any terms used should be defined. The abbreviations CCA and MMDS are for example not explained.

Article 3

The provision that the documents shall be accepted within the time limit determined by the CCA decision is a bit confusing. There are various time limits in the Code as well as the Regulation (e.g. Article 7 of the Regulation) so it is unclear what extra time limit CCA will decide. As for public sittings, comments on this are made in different places of this analysis.

Article 4

General comments on having separate re-broadcasting authorisations rather than re-broadcasting as a smaller part of a licence, have been made elsewhere.

Article 5

The reference to the authority presumably refers to the authority for frequencies and telecommunication. Comments made elsewhere on the need for close cooperation and coordination apply.

Article 6

Some terms are not entirely clear (like "decrease of apparent radiated power") but mainly the criteria appear to be in line with normal requirements. It is a good and comprehensive list of what is required to determine licence applications. As for the state fee, it can be stressed again that the Code does not set out this fee. Such a fee should have legislative basis. Point 10 on participation or non-participation in other companies is confusing, but this may be due to translation.

The Regulation presumes all documents to be in hard copy, that also appears to be the case for anything issued by the regulator. In many countries, more and more use is made of electronic submission of documents. Even if this may not be possible yet in Moldova, the regulator

should be open for this in a near future as that will almost certainly be the future model also in Moldova. (This is also relevant e.g. for Article 9.)

Generally, instead of repeating requirements from the Code it is better to refer to the Code without repeating (especially to avoid confusion if the Code changes).

Article 7
The explicit provision that the regulator will assist broadcasters is very good.

Article 8
This Article should be read and applied in conjunction with the previous one, as there should be a possibility to complete an incomplete application, etc. But this should be possible thanks to the assistance provided under Article 7.

Article 10
The Article appears to presume applicants being present in person and decisions made in open meetings. In most countries, licence applications are (at least in most cases) made based on the documents and only if special additional information is needed or similar will the applicants have to be present in person. This does not prevent that the regulator invites representatives if it is more suitable to have discussions in person, but this should not always be necessary.

Article 11
This Article sets out a list of worthy aims for broadcasting. What is lacking is a clear pronouncement on the need for plurality - that not all broadcasters provide the same or very similar programming. It is possible within the framework of the provision to take such considerations and it is alluded to in the first point but it is not explicit. Existing licensees that have met all requirements would normally have priority. One slightly confusing element of the Regulation - also when it is read together with the Code - is the question of existing broadcasters and prolongation of a licence: if this is normally done and how this differs from a new application. There are provisions in different places that refer to this issue in differing ways. This should be made more clear in the Regulation and perhaps also some other rule from the regulator.

Article 12
The contest for licences would normally be held when a frequency is available, so the rejection reason that there are no available resources is unclear. This is also the case for the provision on not gathering the required number of votes, as there is no mention of votes in the regulation.

Article 16
In case of renewal of an existing licence, it may not be necessary to re-submit all documents. See the general comment above on renewal.

Article 17
Licence holders who want to renew the licence should normally apply before the expiry of their licence. (Also in this context, see the general comment on renewal.)

Article 19
See above on the possibility for electronic application.

Article 20
Again, an explicit mention of consultations is very good. As for the provisions on the sitting, see above on this.

Article 21
Three working days for issuing the licence is short, which is good for the applicants but only if it is realistic.

Article 22
Again, the reliance on personal presence and hard copy documents is rather old-fashioned. What is important is acceptance of the licence but that should not necessarily involve personal presence to collect it.

Article 24
Suspension and renewal follow from the Code and provisions in the Regulation must reflect the Code. Suspension because of loss of ability to carry out the activity must just be in cases of longer inability.

Article 25
The Article refers to a change in the licence, the content is broadly in line with normal requirements although the terminology mentioning re-issuance is not so common and the Article is a bit difficult to read. What is important is that any amendments to a licence must be applied for and approved by the regulator. It depends on the nature of the amendment if a new licence must be issued or just an adjustment made. It is not clear what the ground would be to sanction a licence holder if he/she applies for an amendment, even if it cannot be given that is not a basis for a sanction. A sanction would apply only if the broadcaster has violated a rule. Further, also in this Article reference is made to a fee based on legislation in force, but it is unclear what this legislation is.

Article 26
See the comments above concerning the confusion on extension and related matters.

Article 27
It is not in contradiction with the Article but just worth highlighting that in case of a successful appeal, a withdrawn licence would be given back. It appears from the Code that the withdrawal would only take place after a final decision so the need to re-issue a withdrawn licence should not occur.

Article 28
Also here it is seen how the fact that there are two separate licences makes the situation more complex.

Article 33
General comments on re-broadcasting are made elsewhere. What is worth noting here is the provision on that re-broadcasting authorisations are given without a contest. If re-broadcasting uses frequencies, it will take up space in the frequency spectrum and why this should be done without contest, depriving others of the use of spectrum, is not clear. It is also not clear what would happen if there are several applicants for re-broadcasting. If re-broadcasting is only made using cable or other technical means not requiring spectrum, the situation would be

different, but there are no provisions in the Regulation or Code on technical means for re-broadcasting. The mention of cable in point (d) of paragraph 3 would appear to indicate that not just cable is expected to be used.

Article 39
Even if a unified licence would be preferable, this Article does provide for coordination between the bodies involved, which is important and mitigates possible problems with two licences.

III. The Statute of the Coordinating Council of the Audiovisual

The statute contains relatively detailed provisions on the structure and workings of the Council. The Statute is mainly well in line with European practice. It varies between countries how and in what form internal workings of regulatory agencies are set out, what is important is that there are clear and transparent rules and this Statute meets that requirement. Even for European Union members, the principle of institutional autonomy means that the exact structure of institutions is for states themselves to determine, provided required functions can be performed. This is even more evident for non-EU members that have to adhere to best European practices rather than binding EU law. It is not clear from the law or the Statute if the status of membership is regarded as a full time position. The amount of work expected would suppose it is full time or almost. It is more common that the Council members are not employed on full or part-time basis, but do the work as Council members on the side of other activities, whereas the staff of the regulatory agency assures the daily work. For the Moldovan Council, the Chairman (as is the term used in the translation of the Statute, in the Code the term President is used) of the Council has the functions a Chief Executive Officer would have. Provided competence and independence of the Council is assured, different designs are acceptable.

The openness of meetings of the regulator is good to the extent that it promotes transparency. However, it must be recognised that there may be instances when a meeting should be closed to the general public. This is as it will be necessary for the regulator to have access to business secrets of the broadcasters and it must be possible to discuss these (like issues related to the financial situation of the broadcasters that may be relevant for the decision on licences) and for the broadcasters to feel secure in that they can provide any information to the regulator, also such information that should not be in the public eye. There may also be a need to discuss personnel issues or other sensitive matters, so the board of the regulator should be entitled to decide to close part of its sittings.

One element missing is mention of a code of ethics. This can and normally would be in a separate document, but as some related issues are touched upon in the Statute, a mention of such code would be good and it should also be one of the priorities of the Council to establish it. This will include a provision that a person shall never take part in a decision if he/she has any form of conflict of interest, i.e. the staff member shall excuse him-/herself. There should also be provisions on gifts: larger gifts can never be accepted but there can be a limit for smaller gifts and normal hospitality, possibly with a provision that even such gifts shall be recorded. The staff must never divulge business secrets.

The structure of the Council would be easier to get an overview of in an organisational chart, which is mentioned that the Council will adopt. It appears that the main sections are directly

under the Council as such whereas supporting sections are under the Chairman. This is quite a common organisational solution. The Code mentions (Article 48) possibility for regional structures of which there is no mention in this Statute.

The Statute contains a lot of detail and may be a bit rigid in that it prescribes tasks exactly. It may be presumed that as work progresses, it may be necessary to change some detail or leave more up to the discretion of the staff. As an initial Statute, this document is however a good and serious attempt to set up functioning working practices.

Article-by-article comments to the Statute

Article 4

It is not good to use "etc." in a normative document as it makes the content vague. It is also not necessary to list all activities in detail but broader categories can be used and/or words like "other related issues" or "other matters necessary for the performance of the mentioned activities".

Article 5

Meetings of the Council twice a month is very frequent and at least after an initial period it should not be necessary with so frequent meetings. The daily work is carried out by the staff and the Council itself needs to meet for certain decisions, but these could normally be handled in less frequent meetings. There could also be a possibility to take certain urgent decisions by circulating documents and talking on the telephone and some forms of routine decisions may be delegated to staff. When work has started properly, the Council will be able to determine what is the necessary frequency of meetings as well as what delegation that would be useful.

The idea of public meetings is good from the point of view of maximum transparency but as pointed out above in the comments to the Code, there must also be a possibility for closed meetings.

The detail on the preparation of the meetings is good, as this kind of established procedure permits meetings to be efficient.

Article 6

The Council members - normally by decision of the Chairman - decide which members of staff take part in the meetings. Especially for the secret parts of meetings, only relevant staff members will be invited to take part.

If the Chairman does not take part in meetings where decisions are adopted, the person chairing that meeting shall sign the decision. (See also Article 17 and 22.)

Article 12

The idea of audiences mentioned is very good but they are to be very frequent according to the statute. With time, a suitable frequency may be found which for efficiency's sake may be less than that said here.

Article 14

Votes for persons are often by secret ballot, but this is not an absolute requirement.

Article 17

As also mentioned above, in case the Chairman is not present, decisions taken at such a meeting should be signed by the person who chaired the meeting. This may be inherent in what is stipulated in Article 22.

Article 19
Although the Chairman normally performs the representation of the Council, he/she may also delegate this to someone else, which may be spelled out here.

Article 23
Comments have been made above regarding the need to have a possibility for closed sessions.

Article 24
It is not clear how this Article will be applied. It is good that the Council can revisit issues if new facts have come to light. This would be possible also without an explicit provision, based on normal administrative practice. At the same time, normally decisions taken should be seen as final. Broadcasters and others may act based upon what the Council has decided and should not have to presume this will be revisited. However, provided there is not too wide application of the possibility to re-examine, the Article is not against normal administrative practice.

Article 31
The description of tasks is very detailed, but as mentioned above, it is good to have quite a large amount of detail so that division of tasks, time lines, etc., are clearly known from the start of the work. As mentioned, later on when the work of the Council progresses, it may be necessary to change some detail or leave more up to the discretion of the staff.

Article 33
It is unclear what the centralisation of proposals refers to.

Article 35
It appears from the Code and the Statute (indirectly) that technical monitoring is done by the body responsible for frequencies and telecommunications matters. It is important that there is an ongoing and functioning cooperation between this body and especially the Expertise and Licensing Department and the Monitoring Department.

Article 37
The provision on keeping recordings for 60 days is a bit unclear. Recordings must be kept by broadcasters in accordance with the Code and normally the Council would ask for copies of such recordings when it wants to examine something. Own recordings will only be made exceptionally. Presumably the 60 day limit is for such recordings - the limit in the Code is 30 days or longer if there is an ongoing case.