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

The Broadcasting Law of the Republic of Moldova
Analysis and commentary for the OSCE

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Executive Summary

Important issues to look for and to study specially in broadcasting legislation are:
- The guarantees for freedom of expression
- Any limitations to this, like prohibitions on incitement to violence, etc, and how these are determined
- How and on what grounds broadcasting licences are issued
- How the regulatory agency is composed and how it works
- The principles for the decision-making of the agency and for appeals
- Limits on concentrations in the media market
- Special tasks and role of the public service broadcaster
- How a pluralistic media market is ensured
- How co-ordination is ensured with the telecommunications authority (frequencies and other issues)
- Programme standards and monitoring of these

Although details of broadcasting legislation as well as the regulatory systems vary between different countries, there are generally accepted international principles and standards for what broadcasting legislation should look like in a democratic society governed by the rule of law. In the analysis of the Broadcasting Law of the Republic of Moldova the above-mentioned and other issues have been studied and analysed based on international principles and standards. Detailed comments are made in an Article-by-Article commentary concerning where and why the law needs improvement in order to meet international standards.

In summary, issues on which the law would need amendment include:
- Stronger guarantees on freedom of expression and against censorship. The relevant provisions need to be formulated in a manner that makes it totally clear that freedom of expression, editorial independence and freedom from censorship are the key guiding principles for broadcasting regulation in the Republic of Moldova and guaranteed by the state through this law and the system it sets up.
- Clearer and easier to understand rules on licences, that ensure that it is not too difficult to get a licence and that the process is transparent and fair. The chapter on licences is extremely confusing with a large number of different licences, that should be replaced with clear and concise rules and one type of broadcasting licence only albeit with possibilities to attach different conditions to it.
- Stronger guarantees for the independence of the regulatory agency
- Possibilities for appeal of negative decisions
- Clearer rules on public service broadcasting organisations, for example including such things as financing and possibilities and limits for advertising. The possible relationship to other laws is not clear so many issues related to public broadcasters remain unclear. The independence of public broadcasters is not sufficiently protected.
- Clearer links to other relevant legislation such as copyright law and telecommunications legislation as well as the advertising law, including organisational co-operation not least in the frequency spectrum management area

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- Rules on programme standards
- A clear provision that broadcasters are responsible for all material that they broadcast

General Comments on broadcasting legislation

International standards for broadcasting legislation

Broadcasting legislation varies between different countries in Europe as also in the rest of the world, but most laws contain several common features. The aim of the legislation is to strike a balance between the different interests in the sphere of broadcasting, which sometimes may appear conflicting. As broadcasting (most often) uses radio frequencies – a limited natural resource – there must be some regulation to avoid chaos in the spectrum and to ensure that this resource can be used for the benefit of the people. Broadcasting is an important tool for freedom of expression and in countries that recognise freedom of expression as one of the most important human rights and freedoms, it is important that broadcasting can be used effectively for the furtherance of this right. However, because of the great impact of broadcasting, it is more important in connection with this media than with e.g. the printed word that incitement to violence and hatred, slander and intrusion into privacy and personal integrity are controlled, which will mean limitations to the freedom of expression. Standards of civility and respect for ethnic, cultural and religious diversity and a prohibition on incitement to violence and hatred must be upheld in broadcasting. The freedom of expression through broadcasting is a freedom that should be exercised responsibly within certain limits.

In countries in transition broadcasting legislation must ensure that the conditions for pluralistic and free broadcasting are created and then maintained. New organs often have to be set up, as broadcasting was a totally state controlled and government based activity in state socialist times. The novelty of the regulation puts extra stress on broadcasting legislation and also on the systems it creates, as it is likely that there will be more complaints and violations than in more stable systems. Furthermore, the introduction of freedom of expression as a principle in previously totalitarian states requires a change in mentality among many actors in order to function. Legislation and other regulation related to it must promote this change of mentality. The self-control or self-regulation of the media is usually non-existent or at least weaker in transition countries than in more established societies and thus entails a need for vigilance regarding the principle of freedom of expression within certain limits. Self-regulation can normally only function well when there is also a functioning and reliable state- and law-based regulation in the background.

With convergence of technologies and less of a distinction between different uses of spectrum (between telecommunications and broadcasting) regulatory systems for various radio frequency spectrum uses must be well co-ordinated. If different areas of communication are regulated separately in separate laws and with separate agencies, there must be mechanisms for co-operation and co-ordination. There is a recent trend in Europe of having common regulators and regulatory systems or at least of establishing closer links between different regulatory bodies.

Apart from principles of freedom of expression in several human rights instruments, there are some international rules on issues specifically related to broadcasting. This includes various instruments of the Council of Europe. The perhaps most important one of these is the Convention on Transfrontier Broadcasting from 1989, which places certain obligations on its contracting states. These include that is must be possible to determine who the responsible broadcaster is, that there shall be provisions protecting against indecency and racial hatred and providing protection of minors. Broadcasting legislation shall provide a right of reply and standards for advertising. Cultural objectives relating to European content and protection for a two-year period of cinematographic works are other requirements. As for the EU, there is not much EU law that directly refers to broadcasting, but principles such as those found in the Convention on Transfrontier Broadcasting apply as do human rights standards. There is a lot of EU law on telecommunications and related issues, which especially as it comes to issues connected with regulatory agencies are connected also with broadcasting.

Regulatory Agencies

The task of implementing broadcasting regulation falls on the regulatory agencies in the countries. Such bodies may have different names and structures, but some common elements are seen. They should be independent professional bodies ruled by principles of equity, fairness, non-discrimination and transparency. It is very important that due attention is paid to getting the right persons to

participate in the regulatory agencies, that there are proper regulations for their work and that they have efficient and transparent working practices. They must be able to regulate broadcasters based on technical criteria and requirements as well as regarding content and business matters. The regulators should have efficient sanctions at hand to ensure the implementation of broadcasting rules. The effective regulation of broadcasting and the proper balancing of the different interests that is the key for broadcasting regulation is carried out by the agency so a competent and independent agency is a necessary prerequisite for a functioning system.

As licensing decisions and decisions on sanctions against broadcasters concern civil rights and can have negative consequences for individuals there must be possibilities to appeal any negative decisions to an independent body. The structure for this varies between different countries, where some have special systems for appeals and others have the possibility to appeal to the ordinary courts. In general, the whole process for licensing and regulation of broadcasting and the management of the frequency spectrum that is necessary in relation to it must be fair, open and based on objective and understandable criteria and with possibilities for those concerned to make adequate representations.

Public and Private Broadcasting

Most European countries and many also in other parts of the world combine public and private broadcasting. Public broadcasting, often called public service broadcasting, is to fulfil needs of the population as a whole in the sphere of broadcasting and be an instrument of cultural, educational, integration and other policies of the state. In exchange for its public funding, public service broadcasting has to perform functions that may differ from those of private broadcasting. The public broadcaster must be accountable to the public in some manner and must provide a content that serves varied interests.

The importance of both types of broadcasting and generally a plurality in the broadcasting market means that legislation must also promote and protect such plurality. This is normally done through a licensing procedure for broadcasters, which at the same time also provides the order in the frequency spectrum that is a prerequisite for broadcasting and other forms of communication that use radio frequencies. The public broadcaster must be given sufficient spectrum so that it can perform its public service functions, but it should not be allowed to occupy more of the spectrum than what is needed. This way, plurality is provided not just by the public service broadcaster catering for different interest but also by the availability of different broadcasters. Through licensing there can be an influence on what types of programmes the private broadcasters provide even if there should be no interference of the authorities on the programming as such.

Broadcasters, including public ones, should be independent. Even if a public broadcaster promotes policies of the state, the broadcaster should be able to act independently and make its own decisions in the day-to-day editorial work. The public broadcasters have an obligation to provide different views and opinions and must be transparent. Within these general principles, public broadcasters should be allowed to design their own programming and editorial policies. They can within certain guidelines cater for different interest and provide a variety of programming, just like the private broadcasters. Funding for public broadcasters is often mixed; i.e. it comes from public sources as well as from advertising. In order for the public broadcasters not to compete unfairly with the private sector, there must be transparent and fair rules on advertising on public broadcasters. Otherwise there may in reality not be any conditions for private broadcasters as the money available in the advertising market is not limitless in any country and especially not in countries in transition. The plurality of the private broadcasters and their complementarity to the public service broadcasters can be ensured in the licensing system and through the requirements that this poses as well as through rules on ownership of media outlets and bans on concentration.

Access to information

Access to information is very important in any democratic society and not least in societies in transition. It is preferable and also most in accordance with the modern principles and laws on access to information that the access is for everyone and generally as wide as possible. Access to and freedom of information thus do not apply only to media but are nevertheless of great importance for

media. There are still also examples in some legislation of special rules of access for journalists and others of the media profession, which may include special rights or just special procedures. Although there is nothing preventing this, it is better that there is a basic principle that access to public information if free and for everyone. The right for media should be just one application of this principle. Access to or freedom of information includes the right to gather, seek and publish public information and obtain information from public bodies. The information can be spread through distribution of printed material or through broadcasting. Freedom of information thus includes, apart from the access to the information, also the freedom to express views and to seek and divulge facts.

Access to information requires legal regulation. Restrictions to access should be clearly stipulated. Any secrecy rules must be understandable, clear and restrictive. The access should be simple and speedy, which means that there must be systems for application of it. All such issues should be regulated in a separate law. The broadcasting law should not have to repeat substantial provisions, as access to information is not just a matter for broadcasters, but it is important that the broadcasting law reflects the principles of access to information.

Copyright and neighbouring rights

Copyright - the right of authors to their creative work – and neighbouring rights – rights of producers, performers and broadcasters – need to be protected by the state in any market economic society. There are a number of international conventions with global impact in the intellectual property field that must be implemented by national law. National law should ensure that the rights are adequately protected and that there is no conflict between different types of intellectual property rights, like between copyright and neighbouring rights. There should also not be any discrimination between citizens and legal subjects from other contracting states to the conventions. The broadcasting legislation must be in accordance with the intellectual property legislation but normally does not have to repeat the substance of the rights. Courts normally deal with infringements of copyright and neighbouring rights but also the broadcast regulator may play a role. Broadcasting is important in the field of copyright and neighbouring rights, but is not the only context in which there could be infringements of such rights so broadcasting legislation is not in itself enough to protect intellectual property rights.

It is not unusual in states where the free media market is still developing that there are quite frequent copyright infringements by broadcasters. If there is no efficient system for monitoring such infringements a tradition may have developed under which it is not seen as a serious crime to show programmes or play music without having the appropriate rights. This may also be due to the fact that it may actually be difficult to get the rights in the correct way. If there is to be a proper and internationally acceptable media market, these trends must be stopped so that the recognition of copyright and related rights becomes the accepted norm. The broadcast regulator must contribute to this.

The Republic of Moldova

General background

The Republic of Moldova achieved its independence in 1991 at the break-up of the Soviet Union. The political and economic development of the country has been difficult and the country is still very poor and has problems with high unemployment, crime (organised and other), corruption and trafficking of women and children. Moldova is one of the main countries of origin for trafficked women in Europe. Dissatisfaction with the situation in the country and the lack of visible development have presumably been important factors in the political dissatisfaction of the people that led to a return of non-reformed Soviet style communists in elections in 2001. Any clear political consequences of this political orientation are difficult to see. The successive governments maintain that they wish for Moldova to get closer to the EU and other democratic structures (although there is also some support for closer co-operation with Russia). Moldova is a member of the Council of Europe and also takes part in other international co-operation. It is not a candidate country for the EU and does not have the economic and political characteristics to become that in the near future, but does have a Partnership and Co-operation Agreement with the EU. Because of historic and language affinities, Moldova has close contacts with Romania. Information about EU compatible laws and other international legal

matters, etc, often comes via Romania. As Romania itself is one of the least developed EU candidate countries, although important this support is not always strong.

Ever since the independence of Moldova, there has been an ongoing conflict in the region of Transnistria, which has declared itself independent and which is dominated by pro-Russian elements in favour of an old-style Soviet communism. The conflict continues at a fairly low level of intensity but still means that in parts of the country the state authorities cannot exercise control and authority.

The country is undergoing a number of reforms, often with international support like from the EU or the United States. Different UN organs are also active in the country. There is a lot of legislative activity going on and new structures and organisations are being created. As it is not an official EU candidate country, Moldova does not have to abide by EU rules as such, although a certain harmonisation follows from the Partnership- and Co-operation Agreement and EU harmonisation is a general goal for the country. Thanks to the legislative activity and assistance to it, Moldova has quite a large number of modern laws that at least to some extent meet international standards. As in all transition countries, there are in some fields, problems and delays in implementing such laws. In other fields the legislation as such is still in need of reform as well.

The broadcasting legal situation in Moldova

The civil society in Moldova is not strong. There are no strong and independent professional associations or similar organisations. The media community and journalists are also not very strong or independent. The Soviet legacy is still felt in all these areas and the difficult situation in the country has meant that there have been no preconditions for a strong development of civil society. This provides some difficulty also for the Broadcasting Law, as a strong civil society with strong organisations can help provide plurality and variety of view in broadcasting regulation. At the same time, there is a free debate in the country and some possibilities for the free media.

The previously existing broadcasting law in Moldova was from 1995 (Audiovisual Law no. 603-XII). This law set up the regulatory agency for broadcasting, the Co-ordinating Council on Audiovisual. There is also a law on licensing (no. 451-XV, 30 July 2001). The 1995 law was in need of revision as the situation has evolved since 1995 and the media scene looks different, as stated in the introduction to the draft new law. In 2002 a law on Tele-Radio Moldova, the main public broadcaster, was passed (no. 1320, 26 July 2002). In the comments to the new draft Broadcasting Law, the need for a new law because of these developments is highlighted and it is pointed to international and especially European standards, with which the new law should be compatible.

Even if the draft law is said to be based on European standards, it in some respects falls short of requirements posed by such standards. In other places the draft law is unclear and for that reason it is not possible to see if it would meet such standards. Such unclarities are especially dangerous when the regulatory system itself is in the process of creation and thus in great need of clear and easily applicable rules. The draft law does not explain how it relates to other laws in the field (such as those mentioned above or the Telecommunications Law) as it explicitly only repeals the 1995 Broadcasting Law and the decrees regarding the Council.

The text of the draft law is reproduced in this commentary for ease of reference and so that there will be no question as to which version of the law the comments apply to (in case there are several versions, as the one used as a basis is not dated or otherwise identified). In some places the translation is not perfect. This is pointed out in the commentary if and where this makes the meaning difficult to understand or otherwise if it is of particular importance, but there is no general commentary to the translation or any corrections in the text of the law reproduced in this report. The report looks at the text of the draft Broadcasting Law only. It highlights where co-ordination with other laws is needed but does not analyse texts of such other laws. The background for comments and analysis are the generally accepted international and European principles and standards for broadcasting regulation that have partly been outlined above.

The Draft Moldovan Broadcasting Law – Article by Article commentary

CHAPTER I. General Provisions.

Article 1 Basic Notions

The following terms are defined in the present Law:

1) *Audiovisual – all the radio and television stations as well as institutions (juridical persons) that broadcast and/or rebroadcast programmes in the territory of the Republic of Moldova.*
2) *Broadcasting – transmission of radio and/or television programs by air (radio electric waves, satellite, etc) or by wires (cable).*
3) *Re-broadcasting - simultaneous receipt and transmission by air or wires of some radio or television programmes of an another radio/television station.*
4) *Programme –an audiovisual communication in the frame of the program schedule of an audiovisual organization identified by its name, video and/or sound signal, content, form and author.*
5) *Programme schedule – the overall total of programmes; musical, sound and/or video intervals between programmes; as well as advertising spots that makes up the working plan of an institution within a certain period of time (a day, a week, etc.).*
6) *Network – a complex system of technical means and established frequencies meant for audiovisual programme broadcasting*
7) *Public Reception – the technical system through which radio and/or television signals are transmitted and/or broadcast throughout the country for all those who wish to receive them.*
8) *Public network - technical equipment that gives an opportunity to receive a radio or television signal and broadcast it throughout the country for all those who wish to receive it.*
9) *Private network - technical equipment that gives an opportunity to receive a radio or television signal for a private use.*
10) *Audiovisual organization – a juridical person that conceives, produces and broadcasts and/or rebroadcasts audiovisual programmes in accordance with its programme schedule.*
11) *Public service broadcasting organization – a juridical person with editorial independence that reflects the interests of all strata of society funded from allocations from the state budget; revenue from technical services and advertising activity, concerts, sponsorship, donations, taxes; as well as other legal sources.*
12) *Private broadcasting organization – a juridical person with editorial independence that reflects interests of on person or of a group of persons funded from an entirely or mostly private capital.*
13) *Central organ in the field – a board of a central public management that regulates the sphere of communications.*
14) *Coordinating Council on Audiovisual – a state autonomous public authority that regulates the audiovisual sphere of activity.*
15) *Preliminary Advice – a document issued by the Coordinating Council on Audiovisual that certifies the right of a contest winner to found an audiovisual organization with general technical features of a broadcasting station or system and equipment recommended by the Central organ in the field.*
16) *Technical License – an official document issued by the Central organ in the field that legalizes the right to operate the telecommunication equipment in accordance with the provided technical parametres.*
17) *Broadcasting License - an official document issued by the Coordinating Council on Audiovisual that legalizes the right of an autochthonous institution to broadcast programmes in accordance with an authorized programme schedule.*
18) *Rebroadcasting License – an official document issued by the Coordinating Council on Audiovisual that legalizes the right of an autochthonous institution to re-broadcast programmes of audiovisual organizations from the Republic of Moldova and/or from abroad.*
19) *Joint (broadcasting and rebroadcasting) License - an official document issued by the Coordinating Council on Audiovisual that legalizes the right of an autochthonous institution to re-broadcast programmes of audiovisual organizations from the Republic of Moldova and/or from abroad as well as alternately broadcast its own production in accordance with an authorized programme schedule.*
20) *Access License - an official document issued by the Coordinating Council on Audiovisual to that legalizes the right of a foreign audiovisual organization to broadcast its programmes entirely in the audiovisual territory of the Republic of Moldova.*
21) *Advertising - sound and/or video fair and definite information, broadcast with a self-promotional purpose on the basis of an agreement with a natural or juridical person regarding the performance of a commercial professional activity or carrying out services against payment.*

The definitions should as far as possible follow accepted international definitions if such exist. "Broadcasting" should be defined as transmission by any (technical) means in order to cover new

technologies and be technology neutral. As for the definitions of the different licences, as will be explained below it is questioned if these different types of licences are necessary at all. The definition of the "Public Service broadcasting organisation" could be confusing, as it is more a description than a definition. If a body does not meet all of these requirements but still presents itself and is seen as a public service broadcasting organisation, would this mean that it cannot be covered by any of the provisions relating to this term in the draft law?

Generally for definitions, it is important that they fit with the terms actually used in the law and the meanings the terms then have. There may be some discrepancies due to the translation here but the main thing is of course that it fits in the original language and also that the list of terms in the original language is in a logical order.

Article 2 Objectives

(1) The Broadcasting Law regulates the activity of companies, studios, public and private radio and television stations, authorities, organizations and other agents that operate in the audiovisual field and defines legal, economic and organizing principles of their activity.
(2) The Law shall not regulate the relationship regarding the foundation and activity of profile radio and television networks (production, technological, educational, professional ones), of other types of communication that operate on the principles of individual commutation and are not meant for mass reception; regarding the activity of all types of radio-amateur clubs as well as the activity related to the lease of audio and/or video production.

Here is an example of how words are introduced that are not defined in the previous Article, like "radio and television station", "studio" and "profile radio and television network". The terms that are defined are the ones that should be used in the substantive provisions of the law unless very obvious terms are used that are in no need of definition.

In Article 2.2 the meaning of "profile radio and TV networks" is difficult to understand.

Apart from these more practical comments, the Article sets out objectives in a general manner and makes reasonable exceptions from the application of the law. This is acceptable, although for pedagogical reasons it would be good to mention the importance of regulation in accordance with principles of freedom of expression here in the beginning of the law.

Article 3 Subjects That May Found Audiovisual Organizations.

(1) an audiovisual organization may be founded by one or more natural and/or juridical persons from the Republic of Moldova under any legal form of organization in accordance with the legislation in force.
(2) Foreign natural and juridical persons shall not found any audiovisual organization on the territory of the Republic of Moldova. Foreign natural and juridical persons that operate within joint ventures with autochthon subjects are an exception.
(3) A natural or juridical person may hold more than 50% of the authorized capital stock only in one audiovisual institution and 20% at the most in others.
(4) Organizations of telecommunications or operating networks of audiovisual communications shall not be founders or co-founders of audiovisual institutions.
(5) The government may contribute to creating conditions of activity for public broadcasting organizations including their technological and technical endowment.

It is not uncommon internationally that there are limits on foreign ownership of broadcasters or other media companies. For this to be of any relevance the limits for foreign ownership should apply also in joint ventures. The foreign owner should be restricted to a certain percentage and this limit should be clear and also reasonable. If there is a policy of limiting foreign ownership, this must be written in such a manner that it can not easily be circumvented, which with the present wording of the Article could be done by having a joint venture where the foreign owner owns almost the entire organisation.

Article 3.3 provides for restrictions on media concentration. The press is not mentioned here. It may be considered to have a limit on cross ownership also of the printed media to avoid excessive media concentration. The restriction is not very far-reaching even for broadcast media.

Article 3.4 is not completely clear. The restriction for telecommunications organisations would appear clear (provided the term "organisations of telecommunications" in the national language is clear enough) but the (organisations) of operating networks of audiovisual communications is less evident. This may have to do with the language. It appears as if there may be a restriction on owners of broadcasting networks to provide broadcasting operations. If there is the intention of such a ban this should be clearer.

Article 4 Rights and Freedom of Audiovisual Speech

(1) Freedom of audiovisual speech implies an severe observance of legislation and shall not be prejudicial to one's dignity, honour, private life or the right of one's own image.
(2) The right to free expression of one's ideas and views, to free information through audiovisual means, as well as the right to get complete, accurate, fair and prompt information are guaranteed by law in the spirit of constitutional rights and freedoms.
(3) Copyright and pluralism of opinions are ensured by the state.
(4) The activity of audiovisual organizations shall neither be censored nor otherwise controlled given that it is carried on in a strict accordance with the legislation.
(5) The editorial independence of an audiovisual institution is recognizes and guaranteed by the present Law given that the subject observes its provisions and the obligatory regulations issued by the Coordinating Council on Audiovisual, as well as the provisions stipulated in deontological codes.

Freedom of expression or speech is a very important human right. It is protected in a wide variety of international instruments. The freedom shall be interpreted widely and limitations to it restricted only to that, which is absolutely necessary. Broadcast regulation is a limit that is recognised (for example in the European Convention on Human Rights) but that should not be more restrictive than needed to achieve its objective. The freedom of speech and not its limitations should be the most prominent thing in this Article. It is true that freedom of speech can be limited in regard of other rights (as alluded to in point 1), but it is the freedom that is the key and the limitation that is the exception. Even shocking or offensive speech is protected. Practice in human rights courts and similar bodies has shown that public people may have to accept to be the objects of offensive speech and criticism more than private people and that the importance of political debates and information to the public may further limit the possible restrictions to freedom of speech. As broadcasting is an important instrument in furthering and promoting freedom of speech, the Broadcasting Act should make very clear that freedom of speech is the most important principle for the law. At times, even something that e.g. is "prejudicial to the private life" will be permitted and in accordance with law.

Broadcasting regulation should not include any elements of censorship or pre-emission controls. In order to check that there are no violations of provisions of broadcasting, including those restrictions on free speech as such rules may entail, there can be a post-emission control. This principle is reflected in this Article, but as it is such a crucial principle it could be even more stressed than in the present version. By saying in point 4 that that there is no censorship or control given that the activity is carried out in accordance with the legislation may be interpreted so that in some cases there *can* be censorship – if the activity is not in accordance with legislation. This should *not* be the case – there can never be censorship. It must be clear that there can be only *post-emission* control and it is crucial in a society with a tradition of media censorship until recently that it is understood that broadcasting regulation should never fulfil the function of a censor.

Copyright and other relevant intellectual property rights must be guaranteed by the state through legislation on these matters. The Broadcasting Act could make a reference to the appropriate laws or at least generally to legislation in force. The statement here is very general and does not give any information about how copyright is to be ensured and what this statement means. It is also better to say "copyright and related rights" or something similar, as there are other types of intellectual property rights that may affect broadcasters. Given the importance of copyright, not least because there are problems with observance of this in many parts of Central and Eastern Europe and the former Soviet Union, copyright could have a sentence or even a point to itself in order to be more visible. It is also rather different from the pluralism of opinions. As for this latter issue, what the state shall do in this context is to guarantee that such pluralism can exist – not itself actively ensure the pluralism as such. Article 4.3 could be better expressed if it was divided in two parts.

Also Article 4.5 sounds as if there may be limitations on editorial independence, referring to laws and codes. Also here the protection against censorship must be stronger. Even if broadcasters of course have to follow the law, the principle of editorial independence should not be compromised in order to ensure adherence to laws: what can happen is that broadcasters are sanctioned if they do not follow laws. They are not deprived of their independence.

In summary, this is a very important Article. Unfortunately it is formulated in a manner by which its content is not totally clear as it can be read as allowing more restrictions on the freedom of speech carried out through broadcasting than what is necessary. The text of the Article should make clear that freedom of expression, editorial independence and freedom from censorship are the key guiding principles for broadcasting regulation in the Republic of Moldova and guaranteed by the state through this law and the system it sets up.

Article 5 Requirements Regarding the Audiovisual Communication and Operation

(1) The audiovisual communication is run on basis of a broadcasting, rebroadcasting, joint, or access license issued to the applicants according to the provisions of the present Law.
(2) Programme broadcasting is carried on by means of acoustic and video equipment that meets the international standards.
(3) The audiovisual institutions may own broadcasting stations and audiovisual programme transmitters and relay circuits as well as any other equipment necessary to ensure a qualitative programme broadcasting.
(4) The audiovisual institutions have a right to lease audiovisual networks of communications regardless of their form of ownership.
(5) Lease of state owned transmitters and networks of audiovisual communications shall not harm the capacity of the means that serve the public broadcasting organizations.
(6) Cable distribution networks of audiovisual communications are owned by either public or private broadcasting institutions and may be rented in accordance with the legislation in force.

As will be specified below, there is no need for the different types of licences. That broadcasting as such is carried out based on licences issued under this law is a relevant and correct statement.

The reference in Article 5.2 about international standards only makes sense if it is known what these standards are and how they are determined. This is not clear from this law but may be based on other laws. A reference should then be made. For individuals wanting to start broadcast operations they must be able to easily find out all the requirements.

Related to Article 5.5 it may be pointed out that the public broadcasters should not be able to block more capacity than they need. Their operation is very important, but it should be proportional to their needs so that private broadcasters can also operate. In practice, lease of transmitters may be the only way to do it as it is too expensive and complicated for each broadcaster to have its own transmitters and other facilities.

Article 6 (wrongly called Article 7 in the translation) Requirements Regarding Obligatory Broadcasting of Certain Programmes and Information

(1) Audiovisual institutions shall promptly and free of charge broadcast press releases and messages of public interest coming in from the Parliament, Presidency and Government. The way of other official information broadcasting is set down in consent with the Coordinating Council on Audiovisual.
(2) Both public and private audiovisual institutions shall broadcast in the first instance the information regarding the declaration of a state of emergency, war, announcement of a general mobilization or information regarding natural calamities.
(3) The audiovisual institution shall inform the public regarding:
a) the organization name and headquarters;
b) its identifying sound and/or video signals (its logo inclusive);
c) programme titles;
d) programme author and producer;
e) technical preventive testing, if the latter entails a break of broadcasting;
f) other essential or useful information.

The requirement to broadcast official messages should not be too burdensome. The messages should be as short as possible and this possibility should be used only in special circumstances. The Parliament, Presidency and Government should not use the right to free broadcasting just to get airtime for non-urgent messages. In a democratic country with a free media such messages should indeed be very rare. In this context there is a need for an attitude change in formerly totalitarian states. The Co-ordinating Council should play a role in this context.

Article 7 Autochthon Production and Language Requirements

(1) At least 50 % of the overall programming of a public service broadcasting institution shall represent the autochthon production (programmes made in the Republic of Moldova). The broadcasting volume of autochthon production of a private audiovisual organization shall make up at least 20 %.
(2) Both public service and private audiovisual institutions shall broadcast at least 65 % of their autochthon production stipulated in par. (1) in the state language of the Republic of Moldova.
(3) Programmes in the state language and languages of national minorities in the overall programming of audiovisual institutions that cover the ethnic areas shall make up at least 25 %.

Requirements on national (or European) production are not uncommon in broadcasting regulation. The term "autochthon" is not a term normally used in English, but this may be a translation matter. This Article may not be clear enough. This applies especially to point 3, where the language requirement is extremely difficult to understand. The requirement in point 2 is not very far-reaching especially for private broadcasters who only need to have 65% of 20% in the state language. When there are language requirements in broadcasting laws these tend to protect state language in countries where that for various reasons may have a weak position or more commonly to protect minority languages. Moldova may encounter both these issues and the key to what a requirement in the broadcasting law should say is that the provision is not too burdensome and does contribute to nationally important language goals.

Article 8 The Public Service Broadcasting Organization (PSBO)

(1) PSBO is a non-commercial institution with a statute of a juridical person, operationally autonomous, editorially independent that ensures, in the spirit of pluralism of opinions, one's right to a complete, accurate and prompt information, and it covers one or more administrative and territorial units.
(2) PSBO that operates in accordance with the provisions stipulated in par. (1) and covers the entire territory of the Republic of Moldova may get the statute of a National audiovisual institution.
(3) The public service broadcasting institutions shall not be privatized.

As the creation of Public Service Broadcasting is an important issue of broadcasting regulation and distinct from provisions that apply to all broadcasters, there could be a special chapter in the law dealing with this. Thus a sub-heading could be introduced before this Article.

It is not totally clear if Public Service Broadcasting Organisations are actually set up by this law. If this is the case it should be made clearer. It is also not clear what relationship there is to other existing laws (like the law on Teleradio Moldova) and if the organ under this law is the same or something different. This law should make these issues completely clear and eliminate any possibilities for conflict or confusion, if there would be different provisions. The fact that Article 8 point 2 says that a public service broadcasting organisation that operates under the Article and covers the entire territory of the country can get the status of National audiovisual institution indicates that there may be other such organisations than that already set up under another law, which makes the matter confusing. It is not clear if there can be more than one national organisation.

The provisions appear to indicate that there can be many regional public service broadcasting organisations. There is nothing in international standards or law preventing this, but for a relatively small county such as Moldova it may be asked if very many public broadcasters are needed. There should also be room left – both in the sense of spectrum and of audiences – for private broadcasters. The provisions appear to indicate that regional public broadcasters only have smaller coverage but even so it must be kept in mind that they should not be allowed to completely monopolise the broadcasting scene. The resources available for public broadcasting are presumably limited so it may

be more cost-effective to have some regional production in the framework of one or a few public broadcasters rather than having many separate organisations.

The fact that editorial independence, operational autonomy and other criteria like pluralism and accuracy are stressed is positive. Editorial independence should indeed be guaranteed by law. But there are no provisions on funding of the public broadcasting organisations. Public service broadcasting should be adequately funded so that it can carry out its task. If it is to be partially funded by advertising revenue, rules for this should be set out. If there is to be a subscription fee this must be explained. Without providing for any funding for the public broadcasters these will not be able to operate. In the interest of transparency the funding should be set out in law. The public service remit as such should also be well defined and set out in the law. This law gives very few obligations to the public service broadcasters and does not explain their role. Some of these issues are perhaps elaborated in other legislation that is to remain in force, but this must in that case be expressed here.

Article 9 The Organs of PSBO

The organs of PBSO shall be:
a) the Council of Supervisors
b) the Board of Administration
c) the Director General

It is important that there are distinct organs for the public service broadcaster, whose respective roles are set out in law. The governing body –the Council of Supervisors – shall make sure that the broadcaster fulfils its public mandate in an efficient manner and it should protect the independence of the body. The governing body should however not interfere in the daily management of the broadcaster.

Article 10 The Council of Supervisors

(1) The Council of Supervisors, an autonomous organ of management, shall supervise the PSBO observance of statutory and legal provisions as well as ensure people's right to a complete, fair and prompt information.
(2) Subject to the type of PSBO (national or regional), The Council of Supervisors shall be composed as follows:
  a) The Council of a National PSBO shall be composed of 15 members at most, proportionally appointed by the Parliament, the President of the Republic of Moldova, and the Government and confirmed through a Parliament decree;
  b) The Council of a regional PSBO shall be composed by 9 members at most, appointed by the regional public administration and confirmed through a decree of the Coordinating Council on Audiovisual.
(3) Each member is appointed for a fixed period of 5 years and may be revoked during his/her term of office by the authority that has issued the normative (standard) act, at the request of the organ that has appointed him/her, in case of an infringement of the present Law provisions, or if for whatever reason a member is incapable of performing his/her duties for a period exceeding 3 months, or has committed a general breaking of law proved by a degree of jurisdiction.
(4) The respective official organ shall appoint another person for the vacant seat in the Council within one month at most. The provisions of par. (1), (2), and (3) above shall apply.
(5) The Council shall elect its own Chairman, Vice-chairman and Secretary by a majority voting.
(6) The Council of Supervisors shall operate and discharge its obligations on the basis of its own Rules of Procedures adopted by the authority that has issued the normative act of its composition confirmation. The Council shall take decisions on the basis of the majority of the votes of members present.
(7) At the end of each calendar year the Council shall make up a report concerning its activity and present it to the approving authority that has issued the normative act of its composition confirmation.
(8) Members of the Council shall act on their authority and shall not represent the organs that have appointed them. Each member shall interrupt any political activity as members in political parties or other formations for the period of his/her term of office.

The role of the Council is expressed briefly but in an acceptable manner. It may be a bit too brief for the division of competence between this body and the Board of Administration as far as programme content is concerned. This will presumably be set out in Rules of Procedure where it should be confirmed that the Council only has the overarching and supervisory role regarding "people's right to a complete, fair and prompt information". As for the composition of the organ, the influence of

governing bodies is very strong as they are totally determining the composition of the organ. There should be possibilities for other organisations to nominate candidates in order to try to get the maximum plurality of the body. Organisations of civil society may i.e. nominate candidates to the organs that appoint the Council. A requirement of professional expertise in fields related to or of direct interest to broadcasting for members of the Council is another means to try to ensure pluralism and professionalism. Although the public service broadcaster is a public instrument, it should be allowed to act independently and the bodies governing it should not be political organs. The provision in point 8 is not in itself sufficient guarantee against an excessive political nature so some further statement on the membership should be made.

The draft law contains different provisions to ensure pluralism and quality when it comes to the Members of the Co-ordinating Council on Audiovisual. These requirements are even more important regarding this, the regulatory agency, but that does not exclude that similar provisions are made in relation to governing organs of the public service broadcasters that also fulfil an important role in the creation of a free and pluralistic media scene.

Members of the Council must feel secure in their position, even if they take unpopular decisions that are not in accordance with current political views, so it should be difficult to remove them. It is especially important that they cannot be removed only by the discretion of the government. Article 10.3 does set out restrictions on removal but these should be even stricter. The words "degree of jurisdiction" in relation to crimes presumably refers to crimes of a certain magnitude, as it should do.

It is a good idea also for this body to stagger appointments (like is done for the Co-ordinating Council) not to have all experience and institutional memory lost at once. It should be possible for members to be re-elected but not for more than one (or possibly a maximum total of three periods).

Article 11 The Board of Administration

(1) The Board of Administration shall ensure an efficient management of PSBO in the view of highly professional programme making.
(2) It shall be composed of 9 members at most for a national PSBO, and 7 members at most for a Regional PSBO The PSBO Director General and his vices are Board members. The PSBO Director General is the Board Chairman.
(3) The Board members shall be appointed for a five-year period by the PSBO Director General and confirmed by the Council of Supervisors. Any member may be revoked before his/her term of office has expired in case of an infringement of the present Law provisions, or if for whatever reason he/she is incapable of performing his/her duties for a period exceeding 3 months, or has committed a general breaking of law proved by a degree of jurisdiction. The provisions of par. (1), and (2) above shall apply.
(4) Board members may not in the exercise of their function represent central or regional public authorities, the interests of third parties or be members of the Council of Supervisors
(5) The Board of Administration shall operate and discharge its obligations on the basis of its own Rules of Procedures adopted by the Council of Supervisors. The Board shall take decisions on the basis of the majority of the votes of members present.

There should be requirements of relevant professional knowledge and strong protection against dismissal, for the same reasons as set out above. If anything, the professional knowledge is even more crucial here. The issue in point 4 of Board Members only representing themselves in a personal capacity could be stated even more clearly. Again, the independence of the public broadcasters is important and it is not clear that this law is strong enough in this respect, so as to avoid that the broadcasters become political mouthpieces of the government.

Article 12. The Director General

(1) The Director General of a national PSBO shall be appointed by the Parliament at the suggestion of the Council of Supervisors for a five-year period. Re-appointment is possible. As long as no successor has been appointed after the expiration of his/her term, the Director General shall continue in office. The Director General shall appoint by order one of the vices as his/her Deputy to exercise the obligations of the Director General in his/her absence.
(2) The Director General of a regional PSBO shall be appointed by the Coordinating Council on Audiovisual, par. (1) above shall apply.

(3) At the suggestion of the Council of Supervisors the Director General may be dismissed by the authority that has appointed him/her before the termination of his/her mandate. In such a case, the other person shall finish the dismissed Director General's remaining term of office.

(4) The Director General shall appoint and dismiss the Vice Directors General of PSBO. Their mandate shall not exceed his/her own term of office.

The reappointment could be limited to one reappointment and thus two terms in total. It is good to allow for more than one term, as experience and expertise can be used, but it is not good if the same people feel they can stay for too long. For someone as central as the Director General, a total of ten years is sufficient. The provision in point 1 that the Director General stays in office if no successor is appointed should be somehow limited, otherwise it sounds as if this situation could carry on indefinitely and the person thus remain even without any reappointment. There are no criteria given for the dismissal. Presumably the Council of Supervisors may elaborate these, some protection is given by the requirement for majority voting in the Council but even so, some further restrictions should apply. The Director General is important for the functioning of the broadcaster and the broadcasting activity would suffer if there were frequent and arbitrary dismissals. To underline the importance of this office and the right person for it, requirements of competence and relevant professional background should be made as well as a statement that the person is appointed in his/her personal capacity.

CHAPTER II. The Coordinating Council on Audiovisual.

Article 13 The Procedure of Creation

(1) The Council shall be composed of 7 members. They shall be experts in matter with a large experience in the sphere of radio and television, and radio-communications. The Council members shall be appointed as follows:
   a) the Parliament – 3 members (2 audiovisual experts inclusive);
   b) the President of the Republic of Moldova – 2 members (an audiovisual expert inclusive);
   c) the Government - 2 members (an audiovisual expert and an expert of communications)

(2) The Council shall be appointed for a six-year period on a rotation basis of three members – one on behalf of each authority mentioned in par. (1) above – after a five-year period.

(3) The members of the Council may be revoked only in case of an infringement of the present Law provisions, or if for whatever reason a member is incapable of performing his/her duties for a period of 6 months, or has committed a criminal infringement proved by a degree of jurisdiction, as well as on one's own initiative.

(4) The respective official organ shall appoint another person for the vacant seat in the Council within one month at most if there is at least a six-month period of mandate left. The same procedure of appointment mentioned above shall apply.

(5) The members of the Council, as safeguards of public interest, shall not represent the political views and interests of those who appointed them.

(6) Members of the Council shall interrupt any political activity as members of political parties or other formations for the period of the term of office.

(7) The members' activity and the social safeguards are carried on under the provisions of the Public Service Law The authority that has appointed a member of the Council shall give him/her a qualification rank.

(8) The members of the Council shall not hold any other paid functions or carry on any activity except the teaching, scientific and creative work given that the latter do not engender a conflict of interests. They may not be governors, shareholders, employers or employees of an audiovisual institution or other media organizations.

It might have been preferable to start the chapter on the Co-ordinating Council with Article 15 that sets out that a Council shall exist, its tasks and role. The legal personality of the organisation could be stated explicitly. It is of vital importance for the functioning of the law that there are clear guarantees for the independence of the body and against any interference in its daily work and decision-making. Methods must be set out to select members so that the risk of political or economic interference is minimised and no political or other group can dominate the body. The process of appointment should be set out clearly in law. Members should serve in their individual capacity and exercise their functions in the public interest. The process for appointment should be open and democratic, it should allow for public participation and consultation. Only individuals who have relevant expertise and/or experience should be eligible for appointment. Membership should be representative of society.

There should be rules on incompatibility, regarding persons with an economic interest in the sector, with political positions or in other positions that would be incompatible with the independent carrying out of their functions in the organ. The terms of appointment should be fixed and there should be guarantees against dismissal. Basically, any rules should be set out in law. This includes both the appointment of the body and its tasks and responsibilities. The funding should be provided in a way that protects the body from arbitrary interference and that guarantees sufficient funds to be able to operate.

Some of these concerns are met in this Article and following ones on the Co-ordinating Council – in some cases the guarantees could be stronger or clearer. Organisations of civil society may be involved in selecting candidates to ensure that different interests are taken into account. As noted above, this may be difficult in Moldova today as civil society is rather weak, but this does not prevent the principle as such.

Article 14 The management of the Council

(1) The Council is run by the President, appointed by the Parliament from among the Council members at the suggestion of the parliamentary Committee of media. He has a three-year mandate. The mandate term may be extended only once
(2) In the President's absence the Vice President runs the Council. A simple majority voting by show elects the Vice President. His mandate may be extended only once.
(3) If the president or vice president functions are vacant another person is appointed to replace the president and the Council members elect a person to replace the vice president within 30 days, par. (1) and (2) above shall apply.

The content of this Article is acceptable, but the third point is not formulated very well (which may be a translation issue). It may be more efficient to let the Council elect also its own president, but there is nothing speaking strongly against this method either. The need for a responsible attitude of the bodies involved in the appointment so that a professional and competent president is appointed can only be underlined.

Article 15 The Coordinating Council on Audiovisual – an Autonomous Public Audiovisual Authority

(1) The Council for Coordination on the audiovisual activity in Moldova (hereinafter referred as "the Council") is an independent public authority that regulates and co-ordinates the operational activity of radio and television companies, stations, studios, organizations and other economic agents in the field.
(2) The Council shall act under the parliamentary supervision, guided by the Constitution of Moldova, the present Law and other normative acts, international agreements and conventions the Republic of Moldova is part of. It shall safeguard the public interest in the field of audiovisual communication.
(3) As a safeguard of public interests in the audiovisual sphere the Council shall ensure:
    a) the observance of pluralism of ideas and views in the programmes broadcast by audiovisual institutions that are under the jurisdiction of the Republic of Moldova;
    b) a pluralism of sources of people's information;
    c) a support of free and fair competition;
    d) the publicity of available frequencies and channels for audiovisual transmissions meant to public access;
    e) programmes that shall protect human dignity and people under age;
    f) the protection of the natives' language and languages of other co-inhabiting ethnic groups;
    g) the transparency of mass communication means in the audiovisual field;
    h) a continual monitoring of licensees' activity;
    i) a transparency of its own activity
    j) other aspects concerning the law observance and the activity of subjects operating in the field of radio and television;
(4) The Council guarantees certain priorities for producers and broadcasters whose audiovisual programmes in the state language are prevailing.
(5) The Council shall draw a set of obligatory rules of procedure concerning the application of the present Law in the daily activity of audiovisual institutions.
(6) The Council shall exercise its right to inspect a public or private audiovisual institution, regarding the observance of its obligations stipulated by the present Law, and of the provisions stipulated in the Broadcasting license, only after the programme has been broadcast. The inspection may be performed on its own initiative or on people's notification. Any prior inspection is excluded.

(7) The Council shall perform its duties on regional level through its territorial inspectors.

(8) The Council may acquire any information concerning the institution's activity and observance of the present Law. The Council may acquire any information concerning the institution activity and its observance of this Law legally specifying the reason and the purpose the information is required for and setting a deadline for its presentation.

(9) The Council has the right to initiate a legal procedure regarding cessation or abrogation of a broadcaster's activity. At the request of the Council the Prosecutor General or public prosecutors reporting to the Prosecutor General have the right to bring a suit against broadcasters regarding their production and equipment seizure.

(10) The Council and the Central election committee shall agree on the airtime and terms of presentation and monitoring of programmes and publicity spots of the electoral campaign on public broadcasting channels.

(11) The Council shall set up its own Statute (Anex1), structure (Anex2) and staff (Anex3), which are integral part of this Law.

(12) The Council shall issue a periodical journal - PANORAMIC TV, which shall be at the same time its own press organ.

(13) The Council shall make up an account of its activity and the way the radio and TV licensees exercise their duties in accordance with this Law at the end of each calendar year. The report shall be put forward in the Parliament for its ratification and then published it the Council press organ.

This is a very important article, it is the basis for the good functioning of the law as only a professional, independent body (appointed in line with previous Articles) that carries out its task in the best possible manner can guarantee the proper functioning of the law. The general tasks and duties are set out adequately in the first two points of the Article. The terminology again does not keep to terms defined in this law, which may leave room for some question marks. The substance should be clear enough though. The third point enumerates objectives and thus illustrates how the generally formulated aims of the first points can be translated into more specific objectives. There are no substantial objections to this list either, although again it may not be totally clear (e.g. point (f) on language.

What is crucial is that these objectives are translated into tasks and duties of the Co-ordinating Council as well as of broadcasters. Here the law may not be sufficiently clear. It will be complemented by rules of procedure and other documents. It is important that international bodies that comment on this draft law continue their vigilance regarding such secondary legislation so that the necessary substance is given to the aims of the Article. The Council shall not interfere in the activities of broadcasters or challenge their editorial independence but at the same time it must have the effective mechanisms needed to carry out its duties.

Article 15.4 is unclear and it is also questionable, as requirements of language are made elsewhere and there should not be any additional preferential treatment. In any case, any basis and exact limits for such "priorities" must be clearly stipulated – preferably in the same place of the law where language requirements are stated. The present provision is open to arbitrariness.

In Article 15.6 the important issue of a prohibition of censorship is mentioned again. Even if this is made even more prominent in the earlier provisions of the law (as suggested) it may be repeated again. The principle should be prominent. At the same time, the right for inspection by the regulatory agency is also important as a tool to ensure proper adherence to the law. Inspection should however only be undertaken as a last instance when it is not possible to get sufficient information by other means. There should be clear rules for how inspections are carried out, inspectors must identify themselves and there must in general be guarantees against abuse of power. The possibility to obtain information (under Article 15.8) and the requirement to keep recordings that should be inserted should normally be sufficient to provide information without the need for physical inspection. Broadcasters should be required to keep programme recordings for a determined period, so that accusations of violation of broadcasting standards can be properly examined.

As far as "notification" by people is concerned, the Council should set up a mechanism for such complaints or notifications to be made. This procedure does not have to be stated in the law, but it is important that it is created so that in practice people know how to make complaints. A complaint-driven monitoring process is to be preferred to one mainly based on monitoring by the authority, but it normally takes time before people get aware of complaint possibilities and mechanisms.

Article 15.9 is too brief for such an important provision. It is not clear from this what the basis can be for such a legal procedure and how they relate to sanctions in Article35 and 36. The Council according to these latter Articles has – as indeed it should have – the possibility to decide on sanctions for different violations of the law and the licence. This is an important instrument for the regulatory agency to make sure the law is properly implemented. There must be sufficient legal guarantees for the sanctions as well as possibilities of appeal. In some cases there may indeed be a need also for a court process but the relationship between the two methods of law enforcement must be clear.

The annexes mentioned in Article 15.11 were not available with the translation of the law that the current report is based on and may not exist yet, as the instruments adopted on the basis of the old law are repealed by Article 38. The annexes should have the same status of the law if they are mentioned as an integral part of it.

Article 16 The Council Sessions

(1) The Council shall adopt binding statements, directions, decisions, and instructions for all the organizations in the field of media.
(2) A Council session shall be deliberative if at least 5 members are present. The decisions shall be taken on the basis of the majority of the votes of members present.
(3) The Council sessions shall be public with the exception of cases stipulated in the legislation or at the request of at least four of members present.
(4) The decisions on the discussed issues shall be voted by show with the exception of cases when at least four of present members request a secret voting.
(5) The decision regarding the way of voting and each member's motivation inclusive are made public in the Council press organ as well as by means of other sources of information, written and electronic.

The enumeration of instruments in Article 16.1 may not use the best terminology in English. It is hoped that it in the original language is clearer that the Council shall not issue such instruments as would interfere in the daily management of the broadcaster or in its editorial policy. The instruments should implement the role of the Council as it has been set out in earlier Articles. Maximum transparency is good as a basic rule but a regulatory agency also does need to be able to have secret deliberations, as sensitive material may have to be discussed. The legislation referred to in point 3 is not clear, if it refers to any legislation or this law (which in itself does not appear to provide for any such cases) and secondary legislation adopted based on it. The reason why each member's motivation for its voting must always be made public is not evident. It would be preferable to have at least the possibility of an exception from this rule – without for that reason deviating from a general principle of openness.

Article 17 Sources of Funding the Council

(1) The Council shall public funded through an annual allocation from the state budget
(2) The Council may carry out services and offer consultations against payment to the audiovisual organizations from Moldova and abroad as well as to the economic agents from other fields of activity. The fee quantum shall be agreed on between the parties.
(3) The revenue coming in from providing services and consultations as well as from the registration of audiovisual organizations shall be transferred to a special (extra budget) Council bank account and shall be used for purchasing sophisticated equipment to facilitate the monitoring process.

Adequate funding of the regulatory agency is very important. The allocation of money from the state budget must be sufficient for the agency to carry out its work. There are examples in some countries of regulatory authorities getting the fees they issue directly into their own budget. This may encourage efficiency and accountability of the organisation. However this is handled, in any case the authority must have sufficient funds to operate while at the same time licence fees should not be prohibitive, so even if these go directly to the agency it must in any case be guaranteed sufficient funds in case the fees - kept at a reasonable level - would not be sufficient. Other sources of income should be additional to the guaranteed income necessary. No extra work taken on by the agency can

be allowed to interfere with or challenge the basic tasks of the agency and should in no way be incompatible with the independence of the agency. This should be expressed in the Article.

Point 3 of the Article and the mention of "sophisticated equipment to facilitate the monitoring process" may be too restrictive. If in future the agency should have all such equipment it needs, it cannot be obliged to purchase more equipment just because it gets some income. This use of funds should be just a suggestion.

CHAPTER III. Official Documents Allowing Audiovisual Activity.

Article 18. Official Documents Allowing Audiovisual Activity

(1) Each audiovisual organization acting in the territory of the Republic of Moldova shall build up its activity on the basis of a Preliminary Advice or licenses, which may differ depending on the genre and nature of its programmes meant for broadcasting, and are issued under the terms of this Law.
(2) While drawing up the official documents, the regulations stipulating the technical standards ensuring a qualitative transmission as well as the provisions of the international conventions in the field of radio communication shall be taken into account.
(3) The official documents have a limited validity starting with the date of their issue. The preliminary notification shall be issued for a period of one year and the Council may prolong its term for one year at most in case of exceptional circumstances. The TV broadcasting License shall be issued for a seven-year period and the Radio broadcasting license – for a five-year period.
(4) When the license validity expires the audiovisual organization shall apply for a new license in accordance with the legislation in force.
(5) If there is more than one contestant applying for one and the same radio frequency or TV channel, the former licensee shall have a priority depending on his/her capital invested in the development of the national audiovisual industry, the broadcasting and programme quality, the degree of law observance during of his/her activity.
(6) If a licensee wishes to continue his/her activity in the field of media, he/she shall register in a common contest and apply for another license term submitting the contest obligatory documents to the Council 90 days prior to the license expiring date. Failure to comply with the conditions mentioned above shall deprive the licensee of his/her priorities in the contest.
(7) The broadcasting, rebroadcasting and joint licenses may be given to a third party in consent with the Council given that the new licensee shall assume all the obligations related to the license in question. The Council decision shall be announced within 30 days at most from the date of application.
(8) All official papers related to the audiovisual activity shall be made public.

Generally, the rules on licences appear quite complex, the chapter is difficult to read and confusing. It is important that it is clear how and on what basis licences are issued, what the requirements are, etc. There is no reason to have all these different categories of licences that are now mentioned in this law and this is not normal practice in an international context. Indeed, the rules are confusing, which contradicts the main requirements for a licensing procedure: simplicity and clarity. The law should set out that a licence is needed for broadcasting. The licence may consist of different parts, mainly differentiating between technical and other requirements, but the applicant should not have to make more than one application. Refusals should be accompanied by written reasons and there should be an appeal. The criteria should be as precise and clear as possible in the law, so that those concerned can understand the process and what is required of them for the licence. The fees should not be prohibitive.

Licences may be subject to terms and conditions, both general and specific. Conditions will be set out in the licence. These must be based on law. The conditions should be proportional and relevant. They must not be changed arbitrarily. The law should set out in clear even if in rather general terms the factors to be taken into account when determining whether or not to issue a licence. These include the technical capacity, the financial viability, the proposed programme schedule and any other factors of relevance for the overall evaluation of the quality and usefulness of the proposed broadcasting service. Details are to be set out in secondary legislation of the regulatory agency.

This is what the law should reflect. Consequently most of the provisions in Chapter III should be deleted. Some of the special elements may be repeated in licence conditions or in guidelines, etc, of the regulatory agency but a lot of the other requirements are only confusing and also too limiting so

may best be abolished altogether. The general requirement to have a licence as expressed in Article 18.1 should remain as well as the reference to international provisions in Article 18.2.

As one specific comment to Article 18.3, the licence periods could be a bit longer although the five and seven year periods are in line with what is often stated as internationally accepted minimum periods. But as the licensing process should be as little of an obstacle as possible and one element of this is that licences should be valid for quite a long time, even longer periods could be considered. As also said below, the need for the preliminary notification is obscure and preferably this instrument should be abolished. The launching of some form of general call or auction of frequencies should be clearer (this also applies to Article 19). The "common contest" is mentioned without any detail. Contrary to all the superfluous and complex detail on various licences, rules on how contests or auctions are organised are needed.

As for the priority in Article 18.5 this is also treated in Article 33. It is unclear in both Articles if all existing broadcasters have a priority to get a prolonged licence provided they have not violated any rules or if the broadcasters are ranked according to different criteria. If it is intended that such broadcasters that have the best programmes, that have invested the most or something else such come first in line in case not all non-sanctioned existing ones can get a renewed licence, the Article(s) should say so explicitly. If there is a ranking of existing broadcasters it must be said in what order different criteria are to be counted and how they are evaluated (or that the details for the evaluation of them will be set out in by-laws). The basic principle must in any case be clear in this law. As there can only be one former contestant for a specific frequency it is unclear in which case the different qualitative elements of Article 18.5 are relevant – or is it just a list of basic requirements for any former licensee to be allowed any priority?

As the rejection of a licence is a decision with negative consequences for the individual, there should be a possibility for appeal of the negative decision. Appeals can be made within the regulatory system but to an independent organ or to administrative courts. Transfer of licence requires approval of the regulatory authority and can be limited to certain specific situations. As the regulatory agency has the task of verifying that the applicant meets certain criteria, the licence issued is issued to one specific subject on the basis that this subject meets criteria, and the licence cannot consequently simply be handed over to another subject.

Article 19 Preliminary Advice

(1) A Preliminary Advice shall be issued by the Council on a competition basis to an applicant who is projecting to conceive, prepare and broadcast or/and transmit audiovisual programmes. It shall certify the winner's right to found an audiovisual organization in accordance with the general technical features of a broadcasting station. The Council without any contest shall issue a Preliminary Advice allowing to build up a cable-distributing network.

(2) Radio frequencies and TV channels announced available for a contest shall be approved by the Coordinating Council on Audiovisual and agreed with the Central organ in the field.

(3) The criteria of frequency and channel distribution shall guarantee the pluralism of opinions, equal conditions and a free competition for all applicants; encourage creativeness and national audiovisual production; support independence and impartiality of programmes broadcast by audiovisual organizations.

(4) The Council shall set up contest regulations and criteria of frequency and channel distribution and make them public at least 45 days prior to the starting date of a contest.

(5) The Preliminary Advice may not be handed over to another person. Its modification can by made only by the Council under the provisions of this Law.

(6) The user shall be bereaved of rights stipulated in the Preliminary Advice if he/she does not apply for a technical license within 30 days at most or does not provide technical conditions for broadcasting within a year at most from the date of the Preliminary Advice issue. In exceptional circumstances, when the user carries out technical works at a large scale and does not meet the deadline, the Council may prolong the term of the Preliminary Advice for another year at most.

The Article does not make it clear or otherwise manage to convince why there is the need for such preliminary advice. The licensing process as such should be simple and not take too long. The Article appears to contradict the principle that the applicant should only have to make one application. It is not for the broadcaster to have to get several licences, technical and otherwise, but for the agency to

get all necessary elements of a licence based on one and the same application, albeit with different parts related to different aspects of broadcasting.

Instead of a preliminary advice before the actual licence, it would be better to stipulate a minimum period in which applications should be dealt with. This way the issue of avoiding undue delays can be dealt with. The criteria that are set out in the Article for what the licensing process should establish are good, but these apply to the licensing process as such and not only for preliminary advice. The time limit in relation to publishing contest regulations should also be retained as should a modified provision (in some ways similar to Article 19.6) on the need to start activities within a certain period after having obtained the licence (which can also be set out in the licence conditions).

Article 20 The Technical License

(1) The Technical License shall legalize the right to exploit the telecommunication equipment in accordance with the standard parametres. It shall be issued by the Central organ in the field under the provisions of the Law of Telecommunications.
(2) The Central organ in the field and the applicant shall agree on the terms and deadlines of putting into operation the broadcasting stations and stipulate them in the Technical License.
(3) In exceptional circumstances the Central organ in the field may modify the network technical parametres including the frequency (TV channel) stipulated in the Preliminary Advice. The Central organ in the field shall justify and agree on the modification with the Coordinating Council on Audiovisual. The user shall be announced about the modification 70 days prior to the date of its coming into force.

Presumably issues under this Article are dealt with in the Telecommunications Law. Generally it is not clear how this law fits with the Telecommunications Law. The new trend in Europe is towards convergence and one regulator. This may not be feasible to do now in Moldova (it is not yet the norm in Europe either), but in any new law in this field made now the matter should be kept in mind. There is a regulatory agency for telecommunications and the work of the broadcasting agency as concerns especially spectrum issues but also issues of technical standards must be closely related and co-ordinated with this agency. How this is done in practice may vary, but it is important that a working method is found so that there is no risk of interference between different users of spectrum, delays in issuing licences for one or other use, etc.

For the applicant of a broadcasting licence it is important that he/she does not have to make more than one application and that any co-ordination between different bodies involved in the licensing is handled by these bodies themselves. Against this background the need for this Article as such is difficult to see. There should be no separate technical licence for broadcasters. What useful content the Article may have is related to adherence to technical standards of equipment, but this could then be expressed clearly. If it also refers to frequency use this should also be said clearly, but then the only substantive provision again would be to stress the co-operation with the telecommunications body and refer to that law.

Article 21 Broadcasting License

(1) The Broadcasting License shall legalize the right of an autochthon audiovisual organization to conceive, produce and broadcast programmes according to an authorized programme schedule.
(2) The Broadcasting License shall be issued on the basis of a Preliminary Advice and a Technical License after an inspection carried out by the Council certifying a satisfactory degree of qualification of the editorial and technical staff to start a constant broadcasting process, the degree of conformity of the programme schedule with the technical parametres stipulated in the documents submitted to the contest.
(3) The Broadcasting License for a public broadcasting organization shall be issued through a decision of the Coordinating Council on Audiovisual without any contest.

Article 22 The Rebroadcasting License

(1) The Rebroadcasting License shall legalize the right of an audiovisual organization from the Republic of Moldova to rebroadcast the programmes of a foreign and/or autochthon broadcaster given that the applicant has a preliminary agreement with the administration of the station, which programmes are to be rebroadcast.

(2) The Rebroadcasting License shall be issued on the basis of a Preliminary Advice and a Technical License as well as a network-leasing contract. An agreement between the institution and foreign broadcaster, authorized by the Council shall obligatory be attached.

Article 23 The Joint License

(1) The Joint License shall legalize the right of an audiovisual organization from the Republic of Moldova to rebroadcast the programmes of a foreign and/or autochthon broadcaster as well as alternately broadcast its own production in accordance with an authorized programme schedule given that the applicant has a preliminary agreement with the administration of the station, which programmes are to be partially rebroadcast.
(3) The Joint License shall be issued on the basis of a Preliminary Advice and a Technical License after an inspection carried out by the Council certifying a satisfactory degree of qualification of the editorial and technical staff to start a constant broadcasting process, the degree of conformity of the programme schedule with the technical parametres stipulated in the documents submitted to the contest. An agreement between the institution and foreign broadcaster, authorized by the Council shall obligatory be attached.
(4) The holder of a joint license may air advertising spots only within its own programmes and blocks of programmes.

Article 24 The Access License

(1) The Coordinating Council on Audiovisual issues the Access License to a foreign broadcaster, without any contest, on the basis of an agreement between the latter and the Council regarding the terms of rebroadcasting foreign channels in the territory of the Republic of Moldova and a network-leasing contract.
(2) The foreign broadcaster shall observe the legislation of the Republic of Moldova and shall not interfere in any Moldova's internal issue.

As has been elaborated above all these Articles, 21 to 24 are unnecessary. There should be a requirement that to broadcast in Moldova, one needs a licence. This is issued by the regulatory authority, the Co-ordinating Council, according to certain principles set out in this law. Details of licence conditions are to be set out in the licence. There is no need for different types of licences, for the applicant it is one application with different parts and special rules, co-ordination with other bodies, etc is the work of the regulatory agency. Provisions on licences should be clear, transparent and objective. These provisions do not meet any of these criteria.

As for the substantial content in Article 24, foreign broadcasters should be able to enter into agreements with broadcasters in the country directly, subject to any limitations that may follow from law (taking into account provisions also under Article 3). The provision on leasing networks adds to the confusion as it is not said anywhere in the law that the regulatory agency, the Council, owns or manages the networks. The provision on non-interference in the internal affairs of Moldova sounds very much like a totalitarian legacy and should be taken out. It is sufficient to point out that the legislation of Moldova should be followed but there is no need for a separate article to say this. If foreign subjects are not prohibited by any other provisions to apply for licences, their applications are to be handled in the same way as any applications.

Article 25 Taxes

(1) Licenses shall be issued after a full payment of license taxes, valid for the whole term of license validity, and the frequency/channel taxes paid annually during the broadcaster's activity.
(2) The tax quantum shall be set up in a differentiated way, depending on the type of license, number and power of transmitters, coverage area, broadcasting output and programme genre, number of subscribers, broadcasting region, by the Council in consent with the Ministry of Finance and passed in the Parliament as amendment to the Law of State Budget.
(3) The Council shall make sure that the audiovisual organizations annually pay the frequency/channel taxes.
(4) The modification of a license or the issue of a license duplicate shall make up 10% of the license taxes.
(5) The license and frequency/channel taxes shall not be refunded to the audiovisual organizations that have been for whatsoever sanctioned.

The use of the word “fee” is better than “tax” in English, but the content shows that what is meant is a licence fee. The fees and the structure for these should be made public. A differentiated structure based on various parameters is appropriate (as provided in point 2). Licence fees should not be altered or at least only to a small extent during the duration of a licence. In point 4 it is not clear what type of modification it could allude to. If the modification of a licence is in no way required or requested by the broadcasters, it may be questioned if it is in all cases justified that an additional fee must be paid because of the modification.

It does not say anything about the use of the licence fees, presumably they form part of the normal state budget. As mentioned, there are examples in some countries of regulatory authorities getting the fees directly into it’s own budget. However this is handled, in any case the authority must have sufficient funds to operate while at the same time licence fees should not be prohibitive.

CHAPTER IV. Cable Programme Reception and Distribution.

Article 26 Principles of programme reception

(1) Audiovisual programmes from a satellite channel may be received either by public or private equipment.
(2) The Council shall issue a rebroadcasting or joint license to broadcasters that receive programmes through public networks.
(3) A programme reception through private networks shall not need a license. In the Republic of Moldova there can be manufactured, sold and operated public reception networks as well as private ones confirmed by authorized state organs.
(4) The cable or air redistribution/rebroadcasting of audiovisual programmes received through private networks shall be punished in accordance with the law.

Article 27 Principles of cable distribution of audiovisual programmes

(1) The audiovisual communication distributed through cable may be separate or cumulative. It includes:
  a) electronic, terrestrial or satellite retransmission of programmes;
  b) differed broadcasting through diverse technical means;
  c) retransmission of programmes with a peculiar conception.
(2) The activity of holders of a preliminary advice and/or a license that provides the right of cable broadcasting, which means building up networks of programme distribution, shall be coordinated and supervised by the authorities of local public administration.

Article 28 The Permission for Network Constructions for Cable Programme Distribution and Broadcasting

(1) The Preliminary Advice for a network construction for cable programme distribution shall be issued by the Council in accordance with the provisions of Art.19(1) and the schedule of programmes, which are to be distributed.
(2) The Council shall issue a license that authorizes the start of operation of .the cable distributing network on the basis of a preliminary advice, a technical license issued in accordance with the network measuring data, and the agreement(s) regarding the programme rebroadcasting authorized by the Council.
(3) The Central organ in the field shall issue the Technical License within 15 days from the date of the request for the measurements of the cable-distributing network.

Article 29 Cable Mandatory Rebroadcasting of Programmes

All the cable-distributing operators shall include in their programme schedules national and regional PSBO programmes and other programmes available for retransmission belonging to private audiovisual organizations operating under the jurisdiction of the Republic of Moldova.

Cable licences should not be more restrictive than absolutely necessary to ensure the application of broadcasting law principles as far as this is necessary. As there is no use of frequencies, the special needs of co-ordination that spectrum management pose are not at hand concerning cable. At the same time, cable distribution that for all accounts and purposes resembles broadcasting should not be allowed to avoid broadcasting rules like programme standard rules. “Must-carry” obligations for

cable operators are quite common in different countries. Apart from this, the comments made on licences above obviously also have bearing on these provisions.

CHAPTER V. Rights and Obligations of Audiovisual Organizations and Their Staff.

Article 30 The Rights of an Audiovisual Organization

(1) Each audiovisual organization has copyright and neighbouring rights to programmes and films produced within the organization as well as the copyright and neighbouring rights resulting from the contractual agreements in accordance with the law.
(2) An audiovisual organization has the right to permit or prohibit other organizations or subjects to:
  a) rebroadcast its programmes and films;
  b) copy, publish or sale recordings of its own programmes/films or recordings of musical, literary and drama works recorded by the audiovisual organization in its studios or in concert/theatre halls.
(3) Programmes belonging to an audiovisual organization may be used by a third party without its consent in the following cases:
    a) for citizens' private use;
    b) for partial use (up to three minutes from each programme/film) by other audiovisual organizations;
    c) for educational purpose in ordinary and high schools;
    d) for other purposes that do not contravene the legislation.

Here it is important to observe that there must be co-ordination with the copyright law. There could be a reference to applicable legislation in the copyright field – the references to "in accordance with the law" and "the legislation" in the Article are not totally clear as they could also refer to this law itself. Apart from this remark, the content of the Article is adequate and reflects intellectual property rights and requirements. If there is no other law on copyright and related rights, the Article is however rather too brief and general to be the only legal basis for the rights. With appropriate references to intellectual property legislation it is not necessary to here repeat more of the substantial provisions of such legislation, but the present content is sufficient.

Article 31 The Obligations of an Audiovisual Organization

(1) The audiovisual organization shall
  a) not jam the programme reception of other audiovisual organizations and communication networks;
  b) meet the state standards and technical broadcasting parametres;
  c) to inform the audience about the changes in its programme schedule in good time;
  d) maintain confidentiality of authors who work under a pen-name and of sources of information that prefer anonymity;
  e) not broadcast materials containing pornography and giving undue prominence to violence, drugs, and other blameable phenomena;
  f) not promote, directly or indirectly, proselytism or other occult cultures;
  g) not insert advertisements over and above its own programmes and blocks of programmes;
  h) not broadcast covert, apocryphal, unfair, and immoral advertisement;
  i) not permit sponsorship of informative and political programmes by natural or legal persons whose principal activity is the manufacture, sale, and consume alcohol and tobacco products;
  j) exactly observe other restrictions stipulated in the Law of Advertising.

(2) The audiovisual organizations shall not radically change the character, the total volume of programme broadcasting and/or the programme conception, radio sound signals and the TV video logo without the Council consent and after having made it public in good time.
(3) The audiovisual organizations shall annually submit a report on their activity to the Council. The annual reports shall be made public.
(4) Any works that could jam the programme reception or lower the programme quality are not allowed in the areas where there is a regular programme reception of an audiovisual organization. Culpable natural and juridical persons, at his/her own expense, shall reimburse the audiovisual organization the expenses for the restoration of a qualitative programme reception.

This is the main Article about the obligations of broadcasters. Unfortunately the Article is not very clear and some obligations should be stressed more and in a clearer manner. What are weak here are

for example the rules about programme standards. As broadcasting has a great impact on society there must be certain standards for the content of broadcasting. This includes that programmes shall respect accepted standards of civility and respect for ethnic, cultural and religious views. Broadcasters shall not incite to violence or crimes and especially not ethnic or other unrest. Broadcasting shall also not in other ways cause public harm. Special care should be taken about programmes broadcast at times when children are likely to watch or listen. The Article mentions pornography, violence, drugs and other blameable phenomena and proselytism and occult cultures. Other parts of the law also allude to the fact that there are broadcasting standards, but it is not clear anywhere. Further provisions on broadcasting standards should be inserted. Broadcasters should also take care not to cause unwarranted distress or intrusion into the privacy of individuals. Programmes should be fair and accurate. Especially concerning news and current affairs, the broadcasters should take care to promote accuracy, fairness and impartiality as well as to distinguish comment from news.

Broadcasting details can be set out in secondary legislation made by the regulatory agency. In countries in transition it is important that standards for broadcasting are clear, so that broadcasters learn to act in accordance with these. It may consequently be suitable that also the law is more explicit on this. There must not be any prior control of broadcasts, as this would amount to censorship, but there can and should be monitoring and action taken afterwards if broadcasting violates the standards set out in law. These standards should not be restrictive so that they act as a form of censorship, but the risk of this is reduced if the standards are clear and understandable. The regulatory agency or any other body monitoring the standards is extremely important in this context, as it is important that the rules are implemented properly, fairly and not too strictly. If all these elements are properly taken into consideration, an environment can be created in which broadcasters can operate freely and independently within the framework dictated by considerations necessary for a decent and fair broadcasting.

It is important that journalists and editors can protect the confidentiality of sources. This is an important principle of freedom of information. This principle is reflected in the Article. The fact that also authors operating under a pseudonym (pen-name) are mentioned makes the relationship to Article 34 potentially problematic, as the latter Article talks about the responsibility of authors or licensees. As is discussed further below, Article 34 should be clearer on the issue of responsibility.

As has been mentioned, broadcasters should be required to keep programme recordings for a determined period, so that accusations of violation of broadcasting standards can be properly examined.

The provisions on advertising are not clear. There is a reference to the Law of Advertising so presumably some details are clear from comparing with this law. But in any case, time limits and similar restrictions on broadcast advertisements should be stipulated (also) in the Broadcasting Law. Consumer protection requires some standards for advertising. Advertising should not be fraudulent, it must be decent and fair and provide at least a minimum information. Advertising should not be misleading and unfair. Apart from this, what is special for broadcasting is that there should be limits on how much advertising there is, when and how and such matters.

Article 32 Rights and Obligations of the Editorial Staff

(1) Each member of the editorial staff of an audiovisual organization have the right to:

- *a) have unimpeded access to select and get the necessary information for programme making;*
- *b) make audio, video recordings and photos;*
- ***c)*** *have access to headquarters of public organs, enterprises, institutions and organizations and be given an audience with the officials;*
- ***d)*** *have access to areas of natural calamities and disasters, accidents, meetings, summits, demonstrations, and other public events in the territory declared under state of emergency showing his/her identity card;*
- ***e)*** *have access to the documents and materials of public interest in accordance with legal procedure;*
- ***f)*** *refuse to carry out an employer's task if it contravenes a law or his/her own convictions*
- ***g)*** *to acquire the maintenance of authorship confidentiality;*
- ***h)*** *have access to courts of all instances;*

(2) Each member of the editorial staff of an audiovisual organization shall not infringe the provisions of Art.4 and shall comply with the requirements resulting from this Law, the statute of an audiovisual organization and his/her individual contract of labour with the employer.

(3) The provisions of par. (1) and (2) above shall apply to free licensers (journalists that are not on the permanent staff).

Access to information is very important in any democratic society and not least in societies in transition. It is best and most in accordance with the modern laws on access to information that the access is for everyone and generally as wide as possible. There are still examples however of special rules of access for journalists and others of the media profession. This provision does not make it clear how it relates to any other legislation on access to information. Moldova has such legislation in place, so a reference can be made. The wide access given in this Article is positive in the sense of the importance of access to information, but the formulation of the provisions is rather general and can be problematic for this reason. Although a basic right to access is good, it is at the same time legitimate that there may be some restrictions on when and how journalists can have access to headquarters of public organs, institutions and organisations. It is also not clear if "enterprises" includes private enterprises. It cannot be required that private enterprises give unimpeded access to all members of the editorial staff of audiovisual organisations without being able to make any requirements. Even public bodies must be able to have some restrictions on when and where they allow persons to have access.

The access to documents and materials of public interest (point e) which is the key element of access to information is not clear, as it is not evident what is "materials of public interest" or who determines it. Presumably "in accordance with legal procedure" refers to the access to information legislation but also this is not clear and it gives the impression that there is some procedure for gaining access to information, which may in practice mean a restriction.

This leads to the situation that this Article, which should provide access to information for media professionals gives rights that in some cases are so wide or at least so vaguely defined that they may be unrealistic in practice. In the core area of access to information – the possibility for media professionals to have access to public documents – the expression of the right instead implies some restrictions.

The right for editorial staff to refuse to carry out an employers' order is something that exists in some European countries and elsewhere for journalists and similar, as a kind of clause of conscience. Most often this entails the right to break off a contract without following normal procedures if the editorial line of the media outlet changes fundamentally as to its political, philosophical or religious orientation. It can also be the right to refuse individual assignments. Even if such ideas are justified out of respect for the convictions of the individuals, the rights to refuse to carry out assigned tasks cannot be too wide, but the details of this should be regulated in employment contracts rather than in the law. For the purpose of the law, point f) may be adequate.

CHAPTER VI. Priorities, Responsibilities, and Sanctions.

Article 33 Priorities

(1) The audiovisual organizations shall have a priority status in getting a license for another term in a contest given that no sanctions have been applied to them on behalf of the Council or the Central organ in the field.

(3) The priority status stipulated in par. (1) above shall also apply to the audiovisual organization that have exceedingly increased the overall volume of programmes made in the state language, have broadcast programmes for youth and children of their own production or got some international awards in the field.

This Article is not clear and the provisions it sets out are confusing – as has already been alluded to above. (In the translation, there is no point 2, but it is presumed this is just a numbering mistake.) The principle that existing broadcasters should have priority to continued licenses is positive. Broadcasters usually need to invest quite a lot to start operations and it would be difficult to attract such investment if it was likely to be only for a very short period. Audiences also need to be able to learn what is available and create viewing and listening habits based on this that do not need to change too often. It is also good that a reference is made to the fact that if a broadcaster is violating the rules, it may lose its priority to continue.

What is not clear is what the second point means. If any existing broadcaster has a priority to get a prolonged licence provided they have not violated any rules, which broadcasters are then covered by the second point? If these are existing, old ones, it appears to contradict the first paragraph according to which all existing broadcasters that have not been sanctioned have priority and instead the positive behaviour of the broadcasters is also required. The second point cannot apply to new broadcasters, as these could not show the improvements mentioned if they have not done anything so far. If the second point means that such broadcasters come first in line in case not all non-sanctioned existing ones can get a renewed licence, the Article should say so explicitly. At least the word "also" in the second point does not fit, as the two parts of the Article cannot be concurrent.

The same principle as in this Article is expressed in Article 18, point 5, which is also not clear. The two provisions read together still do not clearly express if there is a ranking of existing broadcasters and in that case in what order different criteria are to be counted.

Article 34 Responsibilities

(1) The author or licensee shall bear responsibility of programmes that have exerted some kind of physical or moral prejudices with reasonable care according to circumstances and legislation.
(2) A natural or legal person who is morally or physically affected by factual statement in a broadcast shall be entitled to a right of rectification or reply in accordance with the legislation.
(3) The rectification and reply shall be broadcast in the next edition of the same programme or programme category with no comment.
(4) The audiovisual organization that has caused prejudices to a person shall bear responsibility of broadcasting the rectification and to ensure the right of reply.

The right of reply is a very important right in broadcasting. Often it may be sufficient to avoid further negative consequences of a wrongful statement made in broadcasting if a rectification is made or if concerned persons have the right to have their reply broadcast. For this to be efficient, the reply must be broadcast in a timely and effective fashion, given the same prominence as the original statement. The rules in this article basically appear to meet these requirements but are not very detailed. It is possible to issue more details in secondary legislation or regulations of the regulatory agency, but if this were not done more detail would need to be inserted in the law. This includes such matters as if there is no further edition of the same programme or if this is a very long time after the initial one (cf. point 3) there should still be a way of giving right of reply. Some conditions can be put on the reply, as far as its design and duration are concerned. Although the right of reply is very important and should not be unduly restricted, at the same time the provisions providing for it must not be open to abuse. The statement here (point 2) of a person "morally or physically affected" is very vague. It does not show who it is who may determine who is thus affected. It also does not make any provision for any requirement that the statement in question must be false or otherwise particularly harmful, but it indeed appears as if anyone who feels affected can have the right to reply even to truthful and correct statements. At least there should be a requirement that the statement against which the right of reply is exercised places the person, who has the right of reply, in an unfavourable light or is otherwise unjust or unfair. The reference to legislation does not make matters any more clear, as this is such an issue that should be regulated in broadcasting law – i.e. in this very law. It is possible that the reference alludes to secondary legislation but in any case this is not clear and some more substance would be required also here.

It is not totally clear what "bear responsibility" in point 1 and 4 means. It is possible that this is due to the translation. It is presumed that what it means in point 1, is to be legally responsible for any breaches of this or any other laws. How it is decided if it is the author or the licensee that is responsible is then the next question. As it says "or" it appears if the responsibility is not concurrent but alternative, so it must be possible to determine if it is one or the other that in any given case has this responsibility. In any case, it should here be the broadcaster, the licensee, who is responsible for what it broadcasts. It would not be practically feasible to have to turn to the author of material in the programme, as this person may be difficult to identify, as he/she may not have control of all aspects of the emission, etc. It is a principle of international broadcasting regulation that the broadcaster, the licensee, is responsible for what is broadcast. In point 4 the words on responsibility presumably just

mean to make sure this happens. It is not clear why the terminology used is different – "audiovisual organisation" rather than licensee.

Article 35 Infringements and Sanctions

(1) The following actions shall be qualified as infringements:
- *a) broadcasting a film without a contract or with breach of contract terms;*
- *b) violation of provisions stipulated in Art.3 of this Law;*
- *c) illegal broadcasting of advertising;*
- *d) broadcasting on another frequency/channel or violation of technical or area parametres stipulated in the license;*
- *e) broadcasting without a broadcasting and/or technical license or in the period of the broadcaster's activity cessation;*
- *f) rebroadcasting programmes of other channel(s) without an authorized agreement between the broadcaster and programme producer according to Art. 22 (2) above;*
- *g) failure to pay the license taxes in due time;*
- *h) usage of a logo or symbol of another audiovisual organization without the latter's permission;*
- *i) failure to submit the annual report;*
- *j) other infringements stipulated in this Law.*

(1) Infringements stipulated in par. (1) above are subjected to a fine amounting from MDL 5,000 to MDL 15,000.
(2) In the event the Council decides that consequences of the deeds coming within par. (1) above are minor, the licensee shall be given a warning notice. The notice is made public through media.
(3) In the event the licensee does not meet his/her engagements, does not comply with the notice provisions made public, does not pay the imposed fine, the Council shall make an enforcement decision imposing the licensee the following administrative sanctions:
- *a) Suspension of license for a period of three to six months;*
- *b) Repeal of license.*

Violation of broadcasting standards should be mentioned specially as this is one such violation of the law against which sanctions can be decided. (See the comments to Article 31 above on broadcasting standards.)

It is important that the regulatory agency has sanctions at hand to ensure proper implementation of the law. It is normal that sanctions go from the more lenient, such as warnings, to the more encompassing like repeal of the licence. It is crucial that there is a clear proportionality of the sanction to the violation. This principle is reflected in the Article. It should be somehow mentioned how the amount of fine is decided, if only by referring to guidelines of the regulatory agency (which must then of course also adopt such guidelines). The size of the fine can be determined based on the size/reach of the broadcaster or due to the severity of the violation or as a combination of these two factors. In any case, the basis for deciding must be transparent.

Article 36 Sanctioning and Execution of Sanctions

(1) Charging a fine or sanctioning according to Art.35, par. (2) and (4) above shall be applied, depending on the gravity of the infringement and its sequences as well as on prior sanctions, for a period of one year at most.
(2) The licensee may appeal against the Council decision with regard to an administrative sanction within 15 day from the date of its notification.
(3) A lawsuit shall not cease the execution of the Council decision while the case is under a judicial inquiry.
(4) The decision made under the stipulations of Art. 35 and 36, and unprotested within the term stipulated in par. (2) above, gets an executory status.
(5) Statecraft organs have the right to trace illicit broadcasters and manufacturers of radio and television equipment.
(6) The revenue coming in from fine payment shall be allocated as follows: 75% are due to the state budget, 25% shall be transferred to the bank account of the institution that has imposed the sanction. The amounts shall be transferred to a special (extra budget) account of the Council and utilized according to Art.17, par. (3) of this Law.

It is important that there is a possibility to appeal negative decisions. This is a requirement of various human rights instruments like the European Convention on Human Rights. The system for appeals may vary as long as the individual has a possibility to get an independent body to review decisions that have negative consequences for him/her. There should also be an appeal to refusals to grant licences. The appeal must also be made to an independent body, whether a court or another similar body. Here it is presumed the reference alludes to the normal administrative court procedure as provided for in other laws, which is an acceptable way of doing it.

It is better that fines do not go to the budget of the organisation, but to the general state budget, to avoid the accusation that the agency determines fines in order to earn money. Licence fees are more suited as direct income for the regulatory agency.

CHAPTER VII. International Collaboration.

Article 37 Ways of Regulating the International Collaboration

(1) The international collaboration in the sphere of radio and television shall result from the agreements and conventions between the Council and similar foreign organizations.
(2) The International contracts and conventions Moldova is part of shall prevail the provisions of this Law.
(3) Signing agreements regarding rebroadcasting foreign programmes/channels in the territory of the Republic of Moldova is exclusively the right of the Coordinating Council on Audiovisual. The agreement shall stipulate the terms of issuing a license offering the respective organization an access to the territory of the Republic of Moldova.
(4) Agreements mentioned in par. (3) above shall stipulate binding terms with regard to the observance of the provisions of Moldova's Constitution and of other legislative acts. The international agreements are made in the official language of the Republic of Moldova and the broadcasting language of the foreign organization.
(5) Each agreement between a foreign and a national broadcaster shall be made in the languages stipulated in par. (4) above and come into force from the date of its approval by the Coordinating Council on audiovisual.

Parts of this Article, like that international agreements shall prevail, is in line with international standards. Although it may often be practical that it is a co-operation between regulatory agencies, for international agreements it is more likely to be inter-state agreements entered into by the state organs that are empowered to do so under the respective constitutions. It is presumed that point 1 is not intended to make any exception to this general rule. However, what is more difficult to understand is why broadcasters could not enter into their own agreements on rebroadcasting, as long as it is in accordance with the law and the licences. It appears overly restrictive to set out in the law various demands on agreements that are best handled by the parties to them. The provisions do not appear necessary to prevent foreign dominance of the broadcasting scene, which can adequately be done by other means provided in other parts of the law.

CHAPTER VIII. Final and Transitory Provisions.

Article 38 Coming into Force

(1) This Law shall come into force from the date of its publication.
(2) The Audiovisual Law No. 603-XII of 3 October 1995, the Statute of the Coordinating Council on Audiovisual passed by the Parliament Decree No. 988-XIII of 15 December 1996 and "The Structure of the Coordinating Council on Audiovisual" passed by the Parliament Decree No. 566-XV of 19 October 2001 shall be repealed.
(3) Starting with the date of this Law coming into force any stipulation that contravenes its provisions shall have no value.

Article 39 Transitory Provisions

(1) The Parliament, The President of the Republic of Moldova and the Government shall appoint a new composition of the Council within one month from the date of this Law coming into force. The Council in a new composition shall start its activity within 15 days after the date of its appointment.

(2) The current composition of the Council shall cease its activity on the date the terms stipulated in par. (1) above become due.
(3) Licenses issued under the provisions of the Audiovisual Law No. 603-XIII of 3 October 1995, subsequently modified and supplemented, shall remain valid a period they have been issued for.

Article 40 Final Provisions

(1) The Government shall bring all the normative acts in accordance with this Law and settle all the issues concerned with ensuring an efficient activity of the Coordinating Council on Audiovisual within two months at most.
(2) The Coordinating Council on Audiovisual shall draw up the Conception of the Audiovisual Development within six months at most, laying down the audiovisual coverage area in the country.
(3) The Central organ in the field, on the basis of the conception stipulated in par. (2) above shall draw up the National Plan of radio-electric frequencies available for broadcasting and submit it to the Government for approval.
(4) The Conception and the Plan stipulated in par. (2) and (3) above shall be revised every three years in order to secure the public interest more completely.

These provisions are mainly such as are normal and usual in laws to deal with the transition between the old and the new legal basis. It is good that it is made clear that old licences remain in force, which is necessary for legal security.

The co-ordination with the telecommunications law and existing frequency plans must not be forgotten or ignored. There is no mention in Article 40 of existing plans. The period of two months in point 1 of Article 40 appears rather short. It has already been pointed out in several places in this report that the issue of how this new Broadcasting Law fits with other laws, which laws stay in force and which are repealed, is not always clear, as there are more laws that would be affected than those explicitly mentioned.