

Pleadings to adjust the national broadcasting legislation to European standards

Report of the representatives of the civil society

Chişinău - 2006

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Introductory Aspects

This report has been compiled by the representatives of the civil society under the aegis of the Public Policies Institute in the spirit of the desiderata of Decision no. 373-XVI of the Parliament of the Republic of Moldova of 29 December 2005.

The representatives of the civil society have organized 6 public debates upon the draft laws concerning the broadcasting sector. At each of them there participated from 30 to 70 representatives of social institutions dealing with this sector. The public debates resulted in developing over 400 proposals and recommendations to improve the broadcasting legislation. The scope of the debates was determined by several factors, including:

- the peculiar importance of a favorable climate for the development of broadcasting for the democratization of society, a climate that may be created only through an adequate legal framework;
- the existence of political and social consensus regarding Moldova's strategic course towards European integration;
- qualitative developments in constituting and growing up the civil society;
- the availability of the Legislature and of the civil society to cooperate aiming at adjusting the national legal framework to the European standards.

The public debates based in principle on the contents of the draft Broadcasting Code, touched upon most of its articles and spotlighted the key problems, and solving them, including in the legal way, can trigger the judicious development of the Moldovan electronic media.

The Objectives of the Report

Each component part of the report matches the following objectives:

- identifying stipulations in the draft Broadcasting Code needing improvement;
- wording proposals and recommendations for improvement;
- reasoning the proposals and recommendations.

Methods Employed

- profound analysis of the draft texts and, especially, of the contents of the draft Broadcasting Code and compiling reports on the key problems in regulating the domain;
- presenting the respective reports and discussing them within six public debates organized by representatives of the civil society;

- analyzing the compliance of the draft Code provisions with the recommendations of the Council of Europe;
- analyzing the compliance of the draft Code provisions with the national law in force;
- comparing the internal expertise with the external expertise (Article XIX, OSCE, CoE);
- publicly debating upon the draft Broadcasting Code and upon the proposals to improve certain of its provisions with the participation of representatives of the Parliament (the authors of the draft,) the civil society (first and foremost, the media NGOs,) of the Broadcasting Coordinating Council, the Observers Council and the Administration Council of the Teleradio-Moldova Public National Institution; of the Human Rights Centre, of extra-parliament parties, telecommunication regulating authorities, copyright and neighboring rights regulating authorities, of local broadcasters, including public (from Chişinău, Bălţi), of private broadcasters, of journalism faculties of the State University and the ULIM University; of embassies and foreign missions to Chişinău;
- consulting on-demand, provided directly, on the spot, within two public debates by three experts of the Council of Europe;
- consulting on-demand, offered indirectly, by e-mail, by an expert of the Council of Europe;
- gathering and synthesizing the proposals to improve the legal framework regarding the key problems in regulating the broadcasting sector.

The period, activities, organizers

From April the 6th to June the 15th 2006 the following activities were organized and carried out:

No.	Date	Activity/organizer
1.	14 April	Round table „The draft of the Broadcasting Code of RM: concept, structure, contents,” 10 media NGOs – signatories of the Memorandum of 4.04.2006 regarding the cooperation between the Parliament and the civil society (financial support provided by the Eurasia Foundation)
2.	25-26 April	Seminar „The development of the national broadcasting and adjusting the legal regulating frame to European standards,” the Electronic Press Association at the initiative of the Media Division of the Council of Europe
3.	5 May	Public debate „Draft laws: provisions regarding the regulating authority,” the Public Policies Institute (with the financial support of the Soros Foundation in Moldova)
4.	12 May	Public debate „Draft laws: provisions regarding the public radio and TV service,” the Public Policies Institute (with the financial support of the Soros Foundation in Moldova)
5.	19 May	Public debate „Draft laws: provisions regarding the work of private broadcasters,” the Public Policies Institute (with the financial support of the Soros Foundation in Moldova)
6.	29-30 May	National Conference ”The Draft Broadcasting Code: expertise and contributions of the civil society,” the Public Policies

		Institute (with the financial support of the Swedish International Development Agency and of the Soros Foundation in Moldova)
7.	30 May-15 June	Synthesizing the proposals and compiling the report, the Public Policies Institute

Local Raporteurs at public debates:

1. Constantin Marin, State University (USM,) Faculty of Journalism and Communication Science, PhD, dean;
2. Vitalie Nagacevschi, Lawyers for Human Rights, president;
3. Constantin Pîrțac, media expert, ex-BCC member;
4. Alexandru Dorogan, member of Observers Council of Teleradio-Moldova;
5. Vladimir Griceaniuc, Independent Lawyers Association, President;
6. Olimpia Iovu, ABA/CEELI office in Moldova, legal advisor;
7. Vladislav Gribincea, Lawyers for Human Rights, lawyers;
8. Olivia Pîrțac, Independent Journalism Centre, lawyer;
9. Dumitru Țurcanu, USM, head of c;
10. Ion Bunduchi, USM, Lawyers for Human Rights, professor lecturer;
11. Anatol Golea, TV 7, manager;

Foreign Raporteurs at public debates:

1. Kathrin Nyman-Metcalf, expert of the Council of Europe;
2. Bissera Zankova, expert of the Council of Europe;
3. David Ward, expert of the Council of Europe.

Supplementary consulting: Werner Rumphorst, head of EBU Legal Department

Parliamentarians participating in debates:

1. Iurie Roșca,
2. Ștefan Secăreanu,
3. Dumitru Braghiș,
4. Valeriu Cosarciuc,
5. Dumitru Ivanov,
6. Angela Aramă,
7. Anatol Onceanu,
8. Igor Klipii,
9. Anatol Țăranu,
10. Leonid Bujor.

Legal guides in analyzing the Draft Broadcasting Code

National legal bases:

1. Constitution of the Republic of Moldova;
2. Broadcasting Law;
3. Law on Teleradio-Moldova NPBI;
4. Law on access to information;
5. Law on advertising;
6. Law on charities and sponsorship;
7. Law on copyright and neighboring rights;
8. Civil Code;
9. Electoral Code;
10. Law on entrepreneurship and enterprises;
11. Law on telecommunications;

European and international legal bases, other relevant documents:

1. Recommendation (1996) 10 of the Council of Europe on guaranteeing the independence of the broadcasting public service;
 2. Recommendation (99) 1 of the Committee of Ministers on measures to promote pluralism in media
 3. Recommendation (2000) 23 of the Committee of Ministers of the Council of Europe on the independence and functions of broadcasting regulating authorities;
 4. European Convention on Human Rights;
 5. European Convention on Transfrontier Television;
 6. Bern Convention for the protection literary and artistic works;
 7. DIRECTIVE 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
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8. PACE. Functioning of democratic institutions in Moldova. Doc. 10671 of 16 September 2005. Report Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) Co-raporteurs: Mrs. Josette Durrieu, France, Socialist Group and Mr. André Kvakkestad, Norway, European Democrat Group
 9. PACE. Functioning of democratic institutions in Moldova. Recommendation 1721 (2005). Assembly debate on 4 October 2005 (27th Sitting) (see Doc. 10671, report of the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-raporteurs: Mrs. Durrieu and Mr. Kvakkestad). Text adopted by the Assembly on 4 October 2005 (27th Sitting).
 10. PACE. Functioning of democratic institutions in Moldova. Resolution 1465 (2005). Assembly debate on 4 October 2005 (27th Sitting) (see Doc. 10671, report of the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-raporteurs: Mrs. Durrieu and Mr. Kvakkestad). Text adopted by the Assembly on 4 October 2005 (27th Sitting).
 11. Article XIX. State to public. Genuine public service broadcasting in Belarus, Moldova and Ukraine? London, December 2005
 12. OSCE. The Representative on Freedom of the Media Miklós Haraszti. Assessment Visit to Moldova Observations and Recommendations. 16 December 2004

Part I. The Broadcasting Regulating Authority

Chapter 1.1. Reasons of principle

The national legal framework should coherently provide for and insure that the broadcasting regulating authority:

- shall be set up on the basis of democratic, professionalism and transparency principles;
- shall be institutionally autonomous;
- shall be protected from the influence of the political and economic factors in taking decisions;
- shall enjoy sufficient competences to fully contribute to harmonious development in the national broadcasting field;
- shall treat every broadcaster in an equal and fair manner;
- shall have guaranteed and sufficient funding;
- shall act transparently;
- shall contribute, through all its work, to observing the citizen's fundamental right to be informed through the agency of broadcasters' offers.

1.1. Recommendations

The proposals and recommendations from the table below constitute a synthetic product of the public debates on this subject. They envisage only the articles of the draft Broadcasting Code regarding the broadcasting regulating authority. In more cases there are several versions to improve the same provision of the draft.

DRAFT AUDIOVISUAL CODE	PROPOSALS /RECOMMENDATIONS	ARGUMENTS/REMARKS
Article 39. Status of Coordinating Council of the Audiovisual (1) The Coordinating Council of the Audiovisual, hereinafter referred to as the Council, is an autonomous public authority under parliamentary control.	Article 39. Status of Coordinating Council of the Audiovisual (1) The Council is an autonomous public authority.	Recommendation Nr. R (2000) of the committee of ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector: « it is important that member States should guarantee the regulatory authorities for the broadcasting sector

<p>(2) The Council is the representative and the guarantor of public interest in the field of audiovisual communication exercising the attribution of supervisor of the activity of the public radio broadcaster, including private radio broadcasters, is the authority responsible for the implementation and observance of the provisions of the present Code, of the conventions, treaties and agreements between the countries in the field of the audiovisual to which the Republic of Moldova is party.</p> <p>(3) The Council has the status of public legal entity with all the emerging attributions.</p> <p>(4) The Council is consulted in the process of defining the position of the Republic of Moldova and can take part, through representatives, in international negotiations on audiovisual.</p>	<p>(2) The Council is the representative and the guarantor of the public interest in the broadcasting field, is the authority responsible for implementing and observing the provisions of this Code, of the conventions, treaties and interstate accord in the broadcasting field to which Moldova is part.</p> <p>(3) Intact.</p> <p>(4) The Council is consulted in the process of working out laws concerning electronic mass-media, of defining Moldova's position and may participate, through representatives, in international negotiations related to the broadcasting field.</p>	<p><u>genuine independence</u>, in particular, through a set of rules covering all aspects of their work, and through measures enabling them to perform their functions effectively and efficiently» -</p> <p>The parliamentary control is exerted under some restricted aspects, regulated by art. 49. The Council must be consulted in the process of working out laws concerning the electronic mass-media.</p> <p>The word “coordinating” is excluded from the name of BCC, the authority shall further be called “the Broadcasting Council”. The word „Coordinating” restricts its functions (supervision, encouragement, licensing, sanctioning etc).</p>
<p>Article 40. Council Attributions</p> <p>(1) The Council exercises the following attributions within its activity:</p> <ul style="list-style-type: none"> a) supervises the observance of the way in which the public radio broadcaster and private radio broadcasters fulfill the obligations assumed in the program service and in the broadcasting license, under the terms and with the observance of the legal provisions; b) supervises the accuracy of the content of 	<p>Article 40. Council Attributions</p> <p>(1) The Council in its work exerts the following tasks:</p> <ul style="list-style-type: none"> a) supervises how broadcasters and services distributors observe the provisions of the broadcasting legislation . b) establishes the procedure of how broadcasters 	<p>Article 40. Here there is a confusion between issues from the Constitutional Law with issues from the Corporative Law. The tasks to regulate the broadcasting field are part of the Constitutional Law, whilst the tasks of the Council to supervise the Public Institution are part of the Corporative Law. These two law fields are based on different principles and criteria. Because of these reasons, combining their tasks within the same institution, practically, is not possible.</p>

<p>programs provided by radio broadcasters only after the public notification of these programs;</p> <p>c) determines the procedure of using private and public radio broadcasters for electoral campaigns for the elections in the Parliament of the Republic of Moldova and local public administration bodies;</p> <p>d) monitors the content of programs provided by radio broadcasters and the proposal of program services guaranteed by the service providers, periodically and whenever the Council considers it is necessary or is notified about the non-observance of the legal provisions, of the regulation norms in this field or of the obligations in the broadcast license by a radio broadcaster or service provider;</p> <p>e) approves the status of the public radio broadcaster and the amendments to it;</p> <p>f) appoints the President of “Teleradio-Moldova” Company, as well as TV and public radio broadcasting Directors, decides their dismissal until the expiry of the mandate;</p> <p>g) monitors the implementation of the budget of the public radio broadcaster;</p>	<p>mirror electoral campaigns.</p> <p>c) monitors the contents of program services offered by broadcasters and the offer of service distributors, on period basis or whenever the Council considers necessary.</p> <p>d) establishes and announces the conditions, criteria and procedure to issue broadcasting licenses.</p> <p>e) establishes and announces the procedure of issuing re-broadcasting license.</p> <p>f) content of letter m) from the text.</p> <p>g) content of letter n) from the text.</p>	<p>The provision from art. 40 is not necessary (4) b) regarding the task of the Council to supervise the correctitude of the contents of the programs offered by broadcasters, as the BC monitors the observance of the program schedule, of the aired programming, advertising, linguistic indices etc, but does not involve into the contents of programs.</p> <p>The Broadcasting Council shall not have specific tasks to administer the public broadcaster because of the following reasons:</p> <ol style="list-style-type: none"> 1. The public service shall be supervised by an autonomous body, what enhances the autonomy and independence of the public service. The proposed scheme could build a sort of „power vertical line” in relation to the public service. 2. It is extremely difficulty for the BC to work disparately in two cardinal directions: the public service and the rest of the segment; 3. The proposed scheme favors the public service in relation to the private one and violates the principle of equal treatment of broadcasters on behalf of the BC. 4. Diminishes the responsibility of the public broadcaster before the public. The transfer of responsibility to the BC is dangerous and may not encourage fair competition; 5. The public service is, thus, responsible before the BC, before the Parliament and before the public. There is a chance of excessively red-taping its work.
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<p>h) forwards requests to obtain state guarantee in order to obtain loans to the advantage of the public radio broadcaster;</p> <p>i) approves internal auditing rules of the public radio broadcaster;</p> <p>j) decides upon the creation, restructuring or cessation of the activities of the structural units of the public radio broadcaster upon the proposal of the Executive Board;</p> <p>k) establishes the conditions, criteria and procedure for the granting of the broadcast license;</p> <p>l) establishes the procedure of granting the re-broadcasting authorization;</p> <p>m) grants broadcasting licenses and re-broadcasting authorizations for program services;</p> <p>n) issues decisions having the nature of regulation norms in order to fulfill its attributions stipulated in the present code.</p> <p>(2) Instructions and recommendations of the Council are made public;</p> <p>(3) While executing its attributions, the Council makes obligatory decisions that enter into force from the moment of their publication</p>	<p>(2) – intact</p> <p>(3) – intact</p>	<p>The explanations of Mr. Werner Rumphorst, head of the EBU's legal department, the author of a model-law on the public broadcasting service: "Although it is true that in the explanatory comments I mentioned the possibility to have a Broadcasting Council, which would regulate and supervise both the public broadcasting, and commercial broadcasting (a model being the CSA of France,) personally I find several reasons pleading against this solution: the public service broadcaster, that is the service that the market could never produce and which depends more or less substantially on public funding, needs support and protection against the attacks of commercial broadcasters, which would like to see it reduced down to a marginalized and minor service (offering but programs that the commercial broadcasters won't be interested to offer) and it also needs to have its independence protected from Government and to get the means necessary to carry out its important social role. A Council which would supervise, at the same time, the commercial broadcasting will naturally attempt to find compromises. And who may exclude that some its decision won't be influenced by bribing on behalf of the commercial sector? Therefore, especially in the countries where corruption is still a major problem, I would rather plead against the French-type solution." Anyway, if the BC exerts the task of a coordinating observer of the Public Service it is necessary:</p> <p>a) to reconsider the membership in the Council of 7 members. Only 3 of those should be ex officio – the president and 2 vice-presidents, whilst the rest of them should be, also, appointed from amongst personalities</p>
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<p>in the Official Monitor of the Republic of Moldova;</p> <p>(4) All the decisions of the Council are grounded. Decisions, including their grounds, are published in the Official Monitor of the Republic of Moldova.</p> <p>(5) The decisions of the Council may be contested in court by any person who considers to be harmed by those.</p>	<p>(4) All the Council's decisions are reasoned. The Decisions, including the arguments, shall be published in Monitorul Oficial al R.Moldova within 15 days since adoption.</p> <p>(5) – intact.</p>	<p>in the field</p> <p>b) to introduce the position of a lawyer of the public institution (to be taken from the alternative draft).</p>
<p>Article 41. Council Responsibilities</p> <p>(1) As a guarantor of the protection of the public interest in the field of audiovisual communication on democratic principles and of the rights of program consumer, the Council must ensure:</p> <p>(a) observance of pluralistic expression of ideas and opinions within programs broadcast by radio broadcasters that are under the incidence of the legislation of the Republic of Moldova;</p> <p>(b) diversity of public sources of information;</p> <p>(c) encourage free competition;</p>	<p>Article 41. Council Responsibilities</p> <p>(1) As a guarantor of protecting the public interest in the field of broadcasting development on democratic principles and of the rights of the beneficiary of programs, the Council is obliged to insure under law:</p> <p>a) the harmonious development and functioning of broadcasting in accordance with the Strategy of covering the territory of Moldova with broadcasting program services;</p> <p>b) a balanced and pluralist character of broadcasting through diversity of program services offered by broadcasters to the public;</p> <p>c) exerting the democratic control over the broadcasters' work in a spirit of dialogue, balance, equality in treatment and in a transparent manner;</p>	<p>Thus, the content of letter a) matches the basic goal of the regulating authority and offer an important index also for the contents of the future Strategy, which will provide a sufficient and fair amount of frequencies for civil needs (compared to the number of frequencies for other needs.)</p> <p>Letter b) indirectly refers to a reasonable distribution of frequencies so as to avoid the situation of a concentration of broadcasters of the same type within an area and the lack of any broadcaster in some other area.</p> <p>Letter c) suggests the authority's vocation to regulate the sector in a amiable way and not the vocation for „the club.” The paramount goal of the authority is not</p>

<p>(d) balanced relation between program services provided by national radio broadcasters and those provided by local and regional radio broadcasters;</p> <p>(e) protection of human dignity and protection of minors;</p> <p>(f) protection of information space, linguistic and cultural-national patrimony, including the culture and languages of national minorities;</p> <p>(g) transparency of medias from the audiovisual;</p> <p>(h) transparency of the own activity.</p>	<p>d) the transparency of own work through presenting reports in public and on a periodic basis; by publishing decisions, results of carried out researches and monitoring; by publishing own publications.</p>	<p>sanctioning, but the functioning of the field. Letter d) exactly shows the obligation and not the option of the regulating authority to be open to the public and it comes to its own work. These obligations, with a general and comprehensive character, may be more specific and should be specified in further chapters.</p> <p>The text of the Article of the Code is criticisable under more aspects. P 1. a) and b) totally concern the obligations of broadcasters and not of the BC. If P.1 b) remains, it should be specified with the answer to the question: how does it insure the pluralism of information sources for the public because: sources are of different level, type, ownership, geographical coverage etc. If it is not specified, it is not clear what is the content of „the pluralism of sources.”</p> <p>P.1 c) „encouraging fair competition”. Competition with whom? Between the local ones and the foreign ones, between the private ones and public ones, between national and regional ones? Competition of programs, volume of advertising? If it is not specified it is a gratuitous provision.</p> <p>P1. d) invokes notions – „national, local and regional broadcasters,” which should be clearly specified in art. 2 (provided any other intervention into the text is made.)</p> <p>P.1 g) does not stipulate how the broadcasters’ transparency can be insured. By publishing the founders’ names? By publishing business figures? In this regard, Chapter 4 is more relevant which speaks of the contents of the file for participation in the frequency context and which, particularly, matches the</p>
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		<p>requirements of the mentioned Recommendations concerning the measures promoting broadcasters' transparency through: the competitors specifying the structure of their enterprise, of owners and capital.</p> <p>The term „program consumer” shall be replaced with „program beneficiary.”</p> <p>The term „consumer” seems inadequate, as it apparently is borrowed from the legislation on consumers' protection. The legislation on broadcasting is governed by principles different of the ones from the law on consumers' protection and there should be no confusion as to the scope of applying the law on consumers' protection in broadcasting.</p>
<p>Article 42. Council Structure</p> <p>(1) The Council consists of 9 members, appointed by the Parliament of the Republic of Moldova.</p> <p>(2) Candidates for the position of the member of the Council are proposed by the corresponding Parliamentary Commission, taking into account the number of mandates held by the legally established Parliamentary factions.</p> <p>(3) The candidates for the position of member of the Council are confirmed by the Parliament</p>	<p>Article 42. Council Structure</p> <p>Variant 1:</p> <p>(1) The BC consists of 9 members, appointed through a decision of the Parliament from amongst candidates with higher education and experience in the fields of: radio, television, communications, communication technologies.</p> <p>(2) The Parliament appoints the members of the BC at the proposal of:</p> <p>a) parliamentary factions – 5 members, including 2 proposed by the opposition parties;</p> <p>b) civil society – 4 members.</p> <p>The candidates of the civil society are proposed by:</p> <ul style="list-style-type: none"> - the Film Makers Union, the Composers Union and Musicians Union – one candidate; 	<p><u>Some comments in the expertise of the OSCE:</u></p> <p>“Appointing the Council does not suit the best European practice, which requires that the members shall be independent and politically appointed. Although the current process envisaged in Article 42 attempts to insure the diversity and non-adhesion to any political party – with a special majority needed for appointment and not appointment by the Government, but by the Parliament – the candidates must be proposed by an independent body and by the Parliamentary factions. They should come from different professions and social layers in order to be as independent as possible.” (p.14)</p> <p><u>Some comments of the expertise of Article 19:</u></p>

<p>with the vote of at least two thirds out of the total number of Members of the Parliament.</p> <p>(4) The person that meets the following requirements can be a candidate for the position of member of the Council:</p> <ul style="list-style-type: none"> a) has a diploma of higher education, preferably licentiate in mass media and/or law; b) has reached the age of 25 and has not reached the legal age of retirement; c) knows the state language of the Republic of Moldova. 	<ul style="list-style-type: none"> - The Fine Artists Union, the Theatre People Union, the Writers Union – one candidate; - the Mass-media Association, the Independent Journalism Centre, the Journalists Union – one member; - the Independent Press Association, Acces-Info, the Electronic Press Association, the Committee for the Freedom of the Press – one member. <p>Article 42 Variant 2:</p> <p>(2) The candidates to the position of members of the Council are proposed by:</p> <ul style="list-style-type: none"> - The Film Makers Union, the Composers Unions, the Musicians Union, the Fine Artists Union, the Theatre People Union, the Writers Union – 3 candidates; - the Mass-media Association, the Independent Journalism Centre, the Journalists Union – 3 candidates; - the Independent Press Association, the Electronic Press Association, the Committee for the Freedom of the Press – 3 candidates <p>(3) Every group of organizations, within 15 days since announced, are to propose for the position of</p>	<p>“Regarding the appointment procedure, we are concerned with the fact that conferring the parliamentary committee the responsibility to nominate the candidates to membership of the Council could lead to a politicized list of candidates, selected on the basis of their loyalty to the party forwarding them, rather than on the basis of the experience they have proved in terms of broadcasting.” (p.11)</p> <p>« 3. The rules governing the broadcasting regulating authorities, especially their members, represent a key element for their independence. <i>They should be defined in such a manner as to protect those authorities from any interference, especially on behalf of political forces or economic interests.</i> » (Recommendation no. R (2000) 23)</p> <p>Comments of experts of the civil society: No matter how many promises the authors would make, appointing the BC members by the Parliament, as they will be proposed by the committee concerned will not solve the big problem the regulating body has confronted with for the last 10 years, and namely the government’s control of and interference into in its work. It’s not the Parliament’s vote that scares – on the contrary, it raises the BC members’ authority, but the fact that the current wording allows for appointing as BC members some marionettes, dishonest people. We insist that at least in the selecting the candidates for the position of a member of the BC, they should involve the professional organizations and the media NGOs, the creation unions. The BC members should represent the broadcasting elite, whose opinions and</p>
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	<p>member of the Council, by a candidate for a position of 2, 4 and, respectively, 6 years. The nominations are to be considered by the Parliament within 30 days.</p> <p>(4) A nominee to the position of a member of the Council can be the person meeting the following requirements (letters (d), (e), (f) have been added:</p> <p>(d) does not have, or its blood relatives are marriage relatives do not have shares or social parts, directly or indirectly, in broadcasting businesses;</p> <p>(e) exercises or has exercised during the last year before nomination for the position of a member of the Council, the function of president, vice-president, as well as similar positions in broadcasting companies</p> <p>(f) is not a member of a political party or of other political structure.</p> <p>Article 42 Variant 3:</p> <p>(1) The Council is composed of 9 members, appointed by the Parliament.</p> <p>(2) The candidates to the membership in the Council are proposed by the respective Parliamentary Committee within 30 days since their nomination.</p> <p>(3) The respective Parliamentary committee</p>	<p>votes should not be contested by any. From this viewpoint, meaningless seems the provision (art. 42 (4) b)) that a BC member can be a person aged 25, that is a fresh graduates in this field. On the contrary a work seniority of at least 7-10 years would be an indispensable condition to acquire the moral right to decide in the intricate aspects of broadcasting.</p> <p>There are also other solutions to strengthen the independence and enhancing the responsibility of the BC members. The first one is to give their oath in front of the parliament. The second – securing the right of a BC member to separate opinion in passing decisions, and this separate opinion should be published in Monitorul Oficial.</p> <p>There also exists the opinion that: 9 members are too many much for Moldova. It was one situation when they used to work but several days a month. In the situation when all of them are paid salaries, it is possibly that only 5 be enough.</p> <p>Variant 9: 3 lawyers, specialists in the field, 3 specialists in telecommunications.</p> <p>Variant 5: 2 lawyers, 2 specialists in</p>
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	<p>appoints the candidates to the positions of members of the Council from amongst specialists in the field (electronic journalism, telecommunications, law, information technologies) on the basis of the conditions and criteria worked out jointly with the civil society and made public within 30 days, starting from the first plenary sitting of the Parliament after this Code enters force.</p> <p>(4) The candidates to the position of members of the Council are confirmed by the Parliament with most of votes of the total number of MPs.</p> <p>Article 42 Variant 4</p> <p>(2) The candidates to the position of BC members are proposed by the respective Parliamentary Committee from amongst renowned personalities in the field, selected following consultations with media organizations and Creation Unions.</p> <p>(3) The BC members are selected and appointed the rules of transparency, represent, collectively, the interests of societies in general and approved of by the vote of 2/3 of the number of MPs.</p> <p>(4) A candidate to the position of a member of the Council can be a person meeting the following conditions:</p> <ul style="list-style-type: none"> a) is a renowned personality in the fields of radio, TV, radiotelecommunications, media law; b) has higher education and work seniority in the field of at least 10 years; 	<p>broadcasting, 1 specialist in telecommunications.</p> <p>Age: if anyone can become an MP after passing through a legally established threshold, the same could be in the BC. Only instead of votes, he/she should meet the requirements established by the parliamentary committee.</p>
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	<p>c) is older than 30 years and has not reach the legal retiring age; d) speaks the state language of the R. Of Moldova.</p>	
<p>Article 43. Council Members</p> <p>(1) The members of the Council are guarantors of the public interest and do not represent the authority that has forwarded them.</p> <p>(2) The term of the mandate of the Council members is 5 years.</p> <p>(3) During the mandate the members of the Council cannot be dismissed from their position, except for the period that is reserved by the present Code for the rejection of incompatibilities provided for by the present Code.</p> <p>(4) One person can have only two consecutive mandates of member of the Council.</p> <p>(5) The position of a member of the Council becomes vacant in the following cases:</p> <ul style="list-style-type: none"> - resignation; - expiration of the term of holding the position; - condemnation by a definite decision of the court; 	<p>Article 43. Council Members</p> <p>(2) The term of the mandate of the members of the Council is 6 years and expires in stages. At the initial stage three members will be appointed for 2 years; 3 members for 4 years and 3 members for a full mandate.</p> <p>(3) One person may hold only one mandate of a BC member. Each member of the Council, at the beginning and at the end of his/her mandate, shall declare his/her personal wealth.</p> <p>(4) While holding the mandate the BC members are immovable.</p> <p>(5) The Council members are obligated to announce any attempts of interference of any kind, on behalf of anyone, from within or from outside the institution, in the legal process of taking decisions.</p>	<p><u>Some comments from the expertise of Article 19:</u> „The terms for which the BC members are appointed should be planned in stages. From the initial group of the BC members, some should work during shorter terms. (p. 12, 13)</p> <p>The Code should provide that a member can be dismissed only for being condemned for a violent crime and/or for felony or theft – and not for a simple offence. In general, we would recommend that the decision of excluding a member (in other cases than resignation at own will or death) should be voted by the same majority of votes of MPs as was needed to appoint him/her. Yet the respective member should be provided the opportunity to sue the decision at court in accordance with usual procedures. Second, we are concerned that “losing citizenship,” may be a reason for dismissal, as in extreme cases it may serve as a basis for abuse. In order to avoid any doubt, we recommend to change the wording to “free will renunciation to Moldovan citizenship.” Third, we are also concerned with “the reasons of health” as a basis for dismissal. This issue may be solved by changing the wording into “obvious incapacity to continue to efficiently exercise the obligations of the member because of health state.” (p. 12, 13)</p> <p>The decisions of forced exclusion of the Council</p>

<ul style="list-style-type: none"> - loss of citizenship of the Republic of Moldova; - for health reasons; - at reaching the age of 65. <p>(6) The members of the Council have the status of public officials.</p>	<p>(6) The vacancy of the function of a member of the Council can happen in the following circumstances:</p> <ul style="list-style-type: none"> - resignation; - expiration of the mandate of holding the position; - imprisonment through final court verdict; - renouncing to the citizenship of the Republic of Moldova; - incapacity to exercise the functions because of health reasons for more than 3 months; - non-motivated absence from 3 consecutive sittings of the Council; <p>(7) When a function of a Council member is vacant, the President of the Council, within 15 calendar days, while in the case of expiration of the term of holding the position, 75 days beforehand, shall inform the Parliament, which appoints a new member of the Council, according to the terms and the appointment procedure, provided by this Code.</p> <p>(8) The capacity of a BC member is incompatible with any public or private jobs, except for the scientific or didactic.</p> <p>(9) The BC members enjoy the prerogatives of a public servant in receiving salary and calculation of working seniority. While holding the mandate they shall abstain from making political statements.</p>	<p>members shall be taken by the Parliament with the same majority of votes as was needed to appoint them, and it should be liable to be revised by a court.” (p.13)</p> <p><u>Some comments of the OSCE expertise:</u> “‘The statute of a public servant granted to the members under point 6 is not adequate, it is not clear whether they are not state clerks, but anyway they should not be viewed as public servants or any other form of public officials which are by every mean controlled by authorities.’”</p> <p>One unsolved issue is the BC office/apparatus. If they are employees and subordinated to the BC president – then they will dictate the BC’s policy, the order of the day, the draft decisions. It should better be subordinated to the <u>Council Secretary</u>, as the alternative draft provided for.</p>
<p>Article 44. Incompatibilities with the Position of Member of the Council</p>	<p>Article 44 is deleted.</p>	<p>The incompatibilities are provided for in other articles, including in additions to art. 43.</p>

<p>(1) The position of member of the Council is incompatible with a public or private position, except for scientific or didactical ones.</p> <p>(2) During the exercise of the mandate the members of the Council cannot be affiliated to parties or other political structures.</p> <p>(3) The members of the Council as well as their relatives by blood or marriage do not have the right to own, directly or indirectly, shares or share parts of commercial enterprises with activities in the fields in which they would be placed in a position of conflict of interests in the capacity of Council member;</p> <p>(4) The members of the Council who are in one of the situations stipulated in paragraphs (1)-(2) when being appointed have no more than 30 days to refuse the corresponding capacity or actions and do not have the right to vote in the Council within this period.</p> <p>(5) In case of failure to observe the provisions of the present Article, the person in question is legally dismissed and his/her seat becomes vacant</p>		
<p>Article 45. President of the Council</p> <p>(1) The Council is headed by one president, similar</p>	<p>Article 45. President of the Council</p> <p>(1) The Council is conducted by a president,</p>	<p>Paying salaries to the BC members is a reasonable</p>

<p>to the position of Deputy Minister, elected from the members of the Council by the Council by an open voting, with a simple majority of the total number of votes of the members of the Council.</p> <p>(2) The president of the Council is responsible for the activity of the Council and the fulfillment of the assigned attributions by the latter.</p> <p>(3) The president of the Council or an authorized member of the Council:</p> <ul style="list-style-type: none"> a) represents the Council in the country and abroad in relations with public authorities, individuals and legal entities; b) represents the Republic of Moldova in international organizations in issues related to the electronic mass medias; c) can take part in the sessions of the Executive Board of the public radio broadcaster. <p>(4) The President of the Council:</p> <ul style="list-style-type: none"> a) runs the sessions of the Council; b) manages the funds of the Council; c) hires and dismisses the employees of the Council; d) signs agreements with individuals and legal entities in order to ensure the activities of the Council. <p>(5) In the absence of the President, the Council</p>	<p>ranked in position as a vice-minister. The president is elected at the first sitting, convened and chaired by the eldest member of the BC. The President is secretly elected by the Council for a three-year term from amongst the BC members, with simple majority of the total number of votes of the members. The president may serve for a single term only in this capacity.</p>	<p>decision. Certainly the volunteerism of the last ten years has brought about only damages.</p> <p>“Ranking in position with a vice-minister ” should be happening only in terms of salary and facilities provided for by the law for this category. But it is established only as far as the BC president is concerned, without establishing the salary category for the BC members. Probably, it might be the case that the President should have a salary provided for the position of a minister, while the BC members – the one provided for vice-ministers.</p>
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<p>is run by the Deputy President.</p> <p>(6) The Deputy President is elected by open voting, by the Council, with a simple majority of the members.</p> <p>(7) If the position of President or Deputy President is vacant, the President and the Deputy President are elected according to the provisions of paragraphs (1) and (3).</p> <p>(8) At least three weeks before the expiry of the mandate of the Council members, the President of the Council announces the President of the Parliament about this fact, and the President of the Parliament notifies the specialty commission, at the first plenary sitting of the Parliament on the beginning of the procedure for the establishment of the new structure of the Council.</p> <p>(9) The president of the Council is the main person responsible for the utilization of loans.</p> <p>Article 46. Remuneration of Council Members</p> <p>During the validity term, the members of the Council are paid a salary and main supplements, special compensations and benefits according to the legislation in force.</p>	<p>(6) The vice-president is secretly elected by the Council for a three-year term from amongst its members, with simple majority of the votes of the BC members. The vice-president serves for one term only in this capacity.</p>	
<p>Article 47. Council Funding</p> <p>(1) The Council is funded from the state</p>	<p>Article 47. Council Funding</p> <p>(1) The financing of the Council shall cover the</p>	<p><u>Some comments of the OSCE expert:</u> The Council will be funded from the state budget.</p>

<p>budget of the Republic of Moldova.</p> <p>(2) Every year, the Council shall submit to the Parliament the budget project that shall estimate the cost of activities performed by the Council for the fulfillment of its attributions and responsibilities.</p> <p>(3) The proposals submitted by the Council on the budget and its organizational structure shall be discussed and approved at the plenary sitting of the Parliament of the Republic of Moldova.</p> <p>(4) The Council publishes annually the report on the financial activity in the Monitorul Oficial.</p>	<p>estimative cost of all activities, thus, as it exercises, effectively, efficiently and fully, the functions it has.</p> <p>(2) The Budget of the Council is made up of the following sources:</p> <ul style="list-style-type: none"> a) state subventions; b) incomes from license taxes; c) incomes of 1 per cent of the yearly turnover of broadcasters; d) incomes from fining broadcasters; e) grants; f) donations; g) incomes from own activities; <p>(3) The state subventions to the budget of the Council are approved of once in 4 years and are yearly reviewed depending on the inflation rate;</p> <p>(4) The share of the budget coming from other sources than the state subsidies will represent the Broadcasters Supporting Fund. The Fund will have a separate set of rules, worked out and announced by the Council. The Fund will primarily support training the personnel and endowing the broadcasting field with high tech equipment.</p> <p>(5) The draft budget proposed by the BC is debated on and approved of by the simple majority at the Parliament's plenary sitting;</p> <p>(6) The Council publishes its report on its financial</p>	<p>There are no provisions regarding the license taxes. The funding mechanism should contribute to the independence of the agency, thus, such funding means as the license taxes should be more welcome than the state budget. The current provisions of Article 47 do not insure the independence, indicating the state funding as a funding source, without containing stipulations as to clear plans, thus to avoid the influence on behalf of the Government exerted through the state funding. (p.15)</p> <p><u>Some comments of the Article 19 expert:</u> The Code must envisage that the Council may get incomes from more sources, including incomes from license taxes, penalties and donations, and that the amount of the state donation should be established to such a level, so as to guarantee the fact that the Council will efficiently guarantee its tasks. Ideally, the contribution on behalf of the state should be determined for a budgetary cycle of three years or more and should be revised because of inflation.</p> <p>Recommendation 2000 (23) describes the financing of the regulating authority as the second key element for insuring the independence of this authority, the first being the way of appointing members and establishes the following:</p> <p>... The ways of financing should be established into the law on the basis of clearly-defined scheme, taking into account the estimative cost of activities of the regulating authorities in order to empower it to carry out its functions fully and in an independent manner...</p>
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	work in Monitorul Oficial, once a year.	<p>The draft Code in those 4 paragraphs of art. 47 provides for: the Council is financed from the state budget of Moldova; the budget proposal and its staff scheme are discussed and approved of in the plenary sitting of the Parliament and that yearly the Council shall publish a report on its financial work in Monitorul Oficial.</p> <p>The last paragraph deserves to be remarked as an efficient mechanism of public control over using the public money. Art. 47 can be improved with supplementary provisions, aimed at strengthening the BC's autonomy and independence. The funding from the state budget, although that money is publicly owned, leaves enough possibilities that the public authorities use their financial deciding power to the detriment of the independence of the budget institution. As a result, the aim of article 47 is to protect the BC from the peril of the interference of the power through the lever of the financial pressure.</p>
<p>Article 48. Council Organization and Activity</p> <p>(1) The Council develops its own internal Statute. The Statute is approved afterwards by the Parliament.</p> <p>(2) The Council issues decisions with a vote of the simple majority of the Council members in open sittings during the fulfillment of its</p>	<p>Article 48. Council Organization and Activity</p> <p>(1) The Council works out and adopts its own Statute within 30 calendar days since its first working sitting. The statute is published on the BC's official web site.</p> <p>(2) The Council in open sittings, adopts decisions with the vote of at least 6 members. The sittings are considered as deliberative, if 7 members of Council</p>	<p><u>Some comments of the OSCE expert:</u></p> <p>“In order to insure the independence, the provision from Article 48 regarding the Parliament's approving of the statute should be excluded; approving of the statute may be carried out by the Council itself.”</p> <p>A problem is still there: adopting decisions with simple majority (as the Code provides for) or by 2/3 (as the Broadcasting law provides)? Experts suggest to go back to adopting decisions with the votes of 6 members, while the sittings should be viewed as</p>

<p>functions and attributions that are assigned to it according to the present Code.</p> <p>(3) In order to fulfill its attributions, the Council establishes its own functional structure, including control and monitoring of the territorial structures that are stipulated in the own Statute.</p> <p>(4) In order to adjust the Strategy of territorial coverage with program services to the National Plan for radio-electric frequencies distributed for audiovisual communication and for studying issues related to the use of the radio-electric spectrum meant for audiovisual communication, as well as of those on the new technological developments with effect on audiovisual communication, a joint consultative commission is created consisting of the members forwarded by the Council and the members forwarded by the Ministry of Information Development.</p> <p>(5) The joint consultative commission adopts its own organization and activity regulations that shall be approved by the heads of the two authorities.</p>	<p>are present. The Council members present at sittings shall not abstain from voting on decisions.</p>	<p>deliberative in the presence of 7 BC members.</p>
<p>Article 49. Supervision and Control over Council Activity</p> <p>(1) The activity of the Council is supervised by the Parliament, by discussing the annual report.</p>	<p>Article 49. Supervision and Control over Council Activity</p>	<p><u>Some comments of Article 19 expert:</u> „In the long run, the draft Code shall stipulate in more detail what one shall include into the annual report submitted to the Parliament. A possible list of the</p>

<p>(2) The annual activity report of the Council is submitted to the Parliament until February 1.</p> <p>(3) If the Parliament rejects the annual report of the Council, the latter must present a program of concrete measures for handling the reported drawbacks within 30 days.</p> <p>(4) When the activity report of the Council is presented, the specialty commission submits a notification on the lawfulness of the activities of the Council, as well as to the accuracy and transparency of financial transactions.</p> <p>(5) The Council has the obligation to make public quarterly reports on the way in which it performs its attributions in carrying out its tasks in the public interest.</p>	<p>(2) The yearly Activity Report of the Council shall be submitted to the Parliament till February the 1st. The Report obligatorily contains a detailed description of how the provisions of this Code have been carried out, as well as the Strategy and the Plan.</p>	<p>items to be included may contain:</p> <ul style="list-style-type: none"> • A copy of the auditing report; • Describing financial activities and money flows; • Describing the activities of the Council during the last year; • Information on licensing, claims and research; • Describing any sanction applied by the Council and the respective decisions; • Information on the Plan on distributing terrestrial radio frequencies; • Analyzing the degree to which the objectives of the last year have been attained; • Its goals for the next year; and • Recommendations of the Council concerning the broadcasting sector, <p>One shall ask for publishing the annual report and distributing it among people concerned.” (p.12-13)</p>
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Part II. Public Radio and TV Service

2.1. Reasons of principle

The national legal framework must coherently provide for and insure that the public and radio/TV service will:

- work to the benefit of the public, offering them, at least, one program service at national scale;
- observe, for the whole content of the program service, the fundamental right of the beneficiary (citizen) to information;
- work in conditions of institutional autonomy and independence of its editorial policy;
- represent, for beneficiary, a truthful, objective, complex, diverse, pluralist and impartial source of information;
- work in conditions of fair competition with private broadcasters;
- work in conditions of insured and sufficient financing with public money in order to fully carry out the functions it has;
- work in conditions of maximum transparency;
- work in conditions of qualitative control on behalf of the public over the managerial acting and institutional performances;
- include in itself, structurally, both national public broadcasters, and local (regional) public broadcasters, including the technical means necessary to broadcast program services;
- not carry out functions and tasks improper for itself.

2.2. Recommendations

The recommendations and proposals in the table below envisages both separate articles from the draft Broadcasting Code, and new provisions.

DRAFT AUDIOVISUAL CODE	PROPOSALS /RECOMMENDATIONS	ARGUMENTS/REMARKS
Article 5. Classification of Radio Broadcasters	Art.5. Classification of broadcasters Variant 1. In the understanding of this Code, the broadcasters under the jurisdiction of the Republic of Moldova are 1) public and private, depending on the genre of programs, of their principles of administration and	Through this classification, according to some clear principles, the document meets the extant realities.

<p>Article 2. Meaning of Used Terms</p>	<p>financing;</p> <p>2) national, regional and local (municipal, district, town and village,) depending on the program services coverage area.</p> <p>3) community (to meet ethnical, linguistic, cultural, confessional etc. needs)</p> <p>Variant 2.</p> <p>In the understanding of this Code, the broadcasters are classified as follows.</p> <p>1) Depending on the ownership form and aim of activity</p> <ul style="list-style-type: none"> a. Public broadcasters b. Private broadcasters c. Community broadcasters <p>2) Depending on the territorial coverage</p> <ul style="list-style-type: none"> a) national broadcasters the coverage of which comprises a geographical area larger than 50 per cent of Moldova's territory. b) regional broadcasters the coverage of which comprises a geographical area not larger than 50 of Moldova's territory c) local broadcasters the coverage of which comprises an administrative unit. <p>Art.2. Meaning of Used Terms</p> <p>d) <i>public broadcaster</i> – broadcasting institution (word</p>	<p>Regarding the existence of local broadcasting, see OSCE's supplementary comments on the draft Broadcasting Code of Moldova of 10 May 2006, pag. 17</p> <p>Art.2.is brought in concordance with the classification of broadcasters</p>
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	<p>„national” is excluded) and further according to the text</p> <p><u>Point e) will be followed by:</u></p> <p>f) <i>national broadcaster</i> – broadcasting institution the signal of which covers over 80 per cent of the territory of the country</p> <p>g) <i>regional broadcaster</i> – broadcasting institution covering more than 2 administrative-territorial units of the country</p> <p>h) <i>local broadcaster</i> – broadcasting institution the signal of which covers one administrative-territorial unit of the country (municipality, district, town or village.)</p> <p>l) <i>community broadcaster</i> – broadcasting institution which meets certain ethnical, cultural, linguistic, confessional etc. needs. Points f,g,h,i etc. Of the initial wording become respectively i,j, l,m,n etc.</p> <p>To give the definition of the notion „public broadcasting service”: <i>Public Broadcasting Service</i> – the totality of broadcasters, with the status of a legal entity of public right, of state enterprises and services, which manage the equipment and the terrestrial network belonging to the state, destined to air audiovisual programs, as well as public-type audiovisual programs produced on demand or at own will by broadcasters with the status of legal entity of private right.</p>	<p>The notion of public service is larger than the notion of public broadcaster</p>
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<p>Article 50. Legal Status of Public Radio Broadcaster</p> <p>(1) “Teleradio – Moldova” Company, hereinafter referred to as the Company, is a public radio broadcaster.</p> <p>(2) The Company has the rights of a public legal entity.</p> <p>(3) The statute of the Company is developed by the Executive Board and approved by the Council.</p>	<p>Article 50. Legal status of the Broadcasting Public Service</p> <p>(1) The Broadcasting Public Service consists of: the National Public Broadcasting Institution „Teleradio-Moldova” (henceforth, NPBI „Teleradio-Moldova”) and the local public broadcasting.</p> <p>(2) The legal status of NPBI „Teleradio-Moldova” and of the local public broadcasting is established by this law and the Rules of organization and functioning which are passed, modified and added under this Law.</p> <p>Article (new). The Broadcasting Public Service Variant 1.</p> <p>(1) The State insures the necessary conditions for creating and functioning, in Moldova, of the Broadcasting Public Service by establishing and fulfilling the principles of editorial independence, institutional autonomy and of some genuine economic guarantees for its effective work. The activity of the Radio and Television Public Service is supervised by society under Law.</p> <p>(2) The Broadcasting Public Service comprises:</p> <ul style="list-style-type: none"> a) the national public broadcasting institution b) regional and local broadcasting institutions; c) Public-type audiovisual programs, produced 	
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	<p>and aired by broadcasters on- demand or at own will;</p> <p>d) state-owned enterprises and services, which manage the equipment and terrestrial networks owned by the state, destined to air audiovisual programs.</p> <p>(3) The Public Broadcasting Institutions are set up by:</p> <p>a) the Parliament, in the case of the national public broadcasting institution – the Teleradio Moldova company;</p> <p>b) by regional- and local-government bodies in case of regional and local broadcasting institutions.</p> <p>4) The Moldovan Public Authorities are entitled, under some decisions and contracts and under the public control, to fund, from the public budget, the production and airing by broadcasters of some public-type programs.</p> <p>5) The „Teleradio Moldova” Company is a public service of radio and television, set up as a public institution, non-commercial, with national coverage area with program services which enjoys the rights of a legal entity of public right.</p> <p>6) The local broadcasting institution, set up as a public entity, non-commercial, has the status of a legal entity of public right, which airs audiovisual programs on the territory of one or more administrative-</p>	
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territorial units.

**Article. Broadcasting Public Service
Variant 2**

1) The State insures the necessary conditions and the functioning, in Moldova, of a *Broadcasting Public Service* through establishing and fulfilling the principles of editorial independence, institutional autonomy and of genuine economic guarantees for its work. The work of the Public Service of Radio and Television is supervised by society, under the law.

2) The broadcasting public service is made up of:

- a) The National Public Broadcasting Institution;
- b) the local public broadcasting institutions;
- c) community institutions;
- d) the public-type audiovisual programs, produced and aired by broadcasters on-demand or at own will;
- e) state enterprises and services managing the equipment and the terrestrial networks owned by the state, destined to air audiovisual programs.

3) The public broadcasting institutions are set up by:

- a) the Parliament, in them case of National Public Broadcasting Institution;
- b) by local public government authorities in the case of regional, municipal, local public

	<p>broadcasting institutions.</p> <p>c) in case of community broadcasters they are set up by non-governmental organizations.</p> <p>4) The Moldovan Public Authorities are entitled to fund, from the public budget, the production and airing, by broadcasters, of some public-type programs, which can be produced under some decisions and contracts, carried out under public control.</p> <p>5) The Broadcasting Public Service can be funded in conformity with the following principles:</p> <ul style="list-style-type: none"> a) Direct financing – through taxes (established by the Parliament or by entitled public authorities;) b) Indirect financing – from the budget (of the state, district, municipality or other local;) c) Donations, sponsorships from natural and legal entities, including from abroad; d) Incomes obtained from own work; e) Other incomes not forbidden by law. <p>Art. 53. Editorial independence, Institutional Autonomy and Freedom of creation</p> <p>1) The Public Broadcasting Institution works on the basis of the following principles:</p> <ul style="list-style-type: none"> a) editorial independence b) freedom of creation 	
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	<ul style="list-style-type: none"> c) institutional autonomy d) guaranteed financing e) public control f) pluralism and diversity in mirroring public interests <p>2) The editorial and creational independence of the institution</p> <ul style="list-style-type: none"> a) The Public Broadcasting Institution is independent in its editorial and creative activity. b) The editorial and creative independence of the institution is protected under the law from any type of interference and influence on behalf of public authorities, political parties and other social-political formations, interest and pressure groups, trade unions, companies, other entities and persons. c) The editorial and creation independence includes the exclusive right of the institution's management bodies to adopt, under the law, decisions concerning the working out of editorial and program policies; adopting and modifying the broadcasting schedule; organizing the editorial and creation activity; conceiving and producing programs; conceiving and presenting news programs and/or current affairs and analytical programs; other activities established by this Code and by other normative acts. d) The institution's management bodies shall draft internal Rules as to the organization of work so as to avoid foreign influences of any kind upon the 	
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	<p>editorial and creative process of the institution</p> <p>3) The independence of the program policy</p> <p>a) The censorship of editorial and creation work of the institution is forbidden;</p> <p>b) The administrative control upon the program editing process in the institution before the respective program is aired is forbidden</p> <p>c) It is no infringement upon the editorial and creative activity of the institution The obligation of the institution to air, priorly and gratuitously, the official communiqués, statements and/or messages received from the Parliament, the President and/or the Government of the Republic of Moldova, on natural calamities, curfews, national catastrophes, other emergencies.</p> <p>4) The editorial and creation independence of the creative personnel</p> <p>a) The creation personnel of the institution is made up of the employees of the institution, working as program producers, reporters, directors, presenters, cameramen and other doing other jobs on a regular basis;</p> <p>b) The management body of the institution are obligated to insure, for the creative personnel, doing their jobs in conditions of editorial and creative independence of the institution, the access</p>	
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	<p>to information, the freedom of creation and scientific freedom;</p> <p>c) The administrative control over the creation work of the of the creative personnel of the institution is forbidden;</p> <p>d) The creative personnel will exercise their job tasks in conformity with the principles of audiovisual communication and other requirements established in this Code;</p> <p>e) Physically or psychically constraining, exerting pressure upon or intimidating the creation personnel of the institution, able to hinder them to carry out their professional tasks or to touch upon his/her social and/or professional prestige, are punished under law</p> <p>5) Institutional Autonomy.</p> <p>a) The Institutional Autonomy includes the right of the broadcaster to freely organize and manage its work, within the boundaries imposed by this Code and other laws.</p> <p>b) The institutional autonomy envisages the organization of the work of the service; recruiting, employing and managing the personnel, used in the service; managing the finances; drafting and carrying out the budget etc.</p> <p>c) The public broadcasting institution is</p>	
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	<p>responsible of exercising the missions in front of supervising bodies, the public and the entities entitled to perform auditing.</p>	
<p>Article 51. Company Attributions</p> <p>(1) The Company has the following attributions:</p> <ul style="list-style-type: none"> a) development, production, broadcast of radio and TV programs about the internal and international social, political and economic events in order to ensure correct, impartial, equidistant information provided to the consumers following the principle of political balance, freedom of expression, creation and beliefs; b) promotion of the national patrimony values based on historical truth, implementation of linguistic policy of the institution according to the provisions of the present Code; c) presentation of the biggest achievements of culture, world and national science, promotion of contemporary civilization values in general to the public; d) cultivation of human dignity, tolerance, public moral, civic spirit, democratic values, national identity, truth, justice, based on moral, political and religious convictions of different groups of population; e) honest, faithful and equidistant broadcast of information within news bulletins; f) providing the right to information to all the 	<p>Article 51. The National Public Broadcasting Institution „Teleradio-Moldova”</p> <p>(1) The National Public Broadcasting Institution „Teleradio-Moldova” is a public service of radio of television, editorially independent and independent in its creative work, institutionally autonomous, which mirrors the interests of all social layers, constituted on the basis of public financial capital, the functioning and development expenditures of which are incurred by whole society through direct funding (taxes) and indirect (budget means,) the broadcasting signal of which has national coverage and the activity of which is supervised by society, under law.</p>	<p>Regarding the objectives concerning to the current wording of art. 51 of the Code, see: the Comments of OSCE of 10 May 2006, pag. 17.</p>

<p>categories of citizens of the Republic of Moldova, including minorities;</p> <p>g) observance of journalist’s professional ethics according to professional standards in the field;</p> <p>h) Record of the events and significant works from national culture and history viewpoint and keeping records for future generations, and creation of own production within the parameters stipulated by the Code.</p> <p>(2) The Company has the right to record or broadcast live and free of charge the sessions of the Parliament, Government, public debates of public authorities, mass meetings, demonstrations, processions, manifestations, commemorative, religious meetings and other public actions regardless of the place where these take place.</p>	<p>(2) The National Public Broadcasting Institution „Teleradio-Moldova” (<i>henceforth called</i> – institution) is constituted in form of public institution.</p> <p>(3) The institution has as a goal to work out, produce and broadcast radio and TV programs in order to promote:</p> <ul style="list-style-type: none"> a) the respect of fundamental human rights and freedoms and of the other constitutional principles and values; b) the objective and impartial presentation of facts, guaranteeing the access of the population to information and the freedom of speech under the conditions of pluralism of opinions, insuring the person’s right to respecting the honor and dignity, to free development, as well as the tolerance and respect for the opposition and minorities; c) the reflection and support of the interests of different social layers; d) truth and justice; e) the national audiovisual works; f) the national culture, the culture of national 	
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	<p>minorities, the European and Universal cultures; g) the education, sports and entertainment.</p> <p>Art. 52 shall be called: “The Editorial and Creative Independence of the Company” with the following points.</p> <p>(1) The Company is independent in its editorial and creative work</p> <p>(2) The editorial and creative independence of the Company is protected by law from any interference on behalf of public authorities, political parties and other social-political formations, interest groups, trade unions, businesses, pressure groupings, other entities and persons.</p> <p>(3) The editorial and creative independence includes the exclusive right of the Company’s supervising and management bodies to adopt, within the boundaries established by this Code, decisions on:</p> <ul style="list-style-type: none"> a) developing the program policy, adopting and changing the program schedule b) organizing the editorial and creative work c) conceiving and producing programs d) conceiving and presenting news and/or current affairs programs 	<p>The “content” of the notion “editorial independence.” Is explained. The mechanism of insuring the editorial independence is provided</p>
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	<p>e) other activities established by this Code and/or <u>the supervising body of the Company.</u></p> <p>(4) The management bodies of the Company shall develop and adopt, through public debates, detailed regulations regarding the organization of the editorial work, so as to avoid any sort of interference upon the editorial and creative process of the Company.</p> <p>Art. 53 shall be called „Ensuring the independence of the program policy”.</p> <p>(1) Censoring the editorial and creative activity is forbidden.</p> <p>(2) The administrative control of editing programs before airing is forbidden.</p> <p>(3) The obligation of the Company to broadcast, priorly and gratuitously, official communiqués, statements, messages received from the Moldovan Parliament, President, Government, shall not be viewed as touching upon the editorial and creative independence, if they are related to:</p> <ul style="list-style-type: none"> a) natural calamities b) curfew c) national catastrophes d) other emergencies 	<p>The public character of the editorial activity is stressed</p>
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	<p>(4) The official communiqués, statements and messages, provided for in paragraph 3 can not have as subject other information</p> <p>(5) <u>The Supervising Body of the Company</u> is responsible of exercising, within the institution, the editorial and creative independence.</p> <p>Art. 54 named: „The editorial and creative independence of the creating personnel ”</p> <p>(1) The job structure, structure and number of the personnel of the Company are approved of, modified and added by <u>the supervising body of the Company</u>.</p> <p>(2) The creative personnel of the Company is made up of the employees of the institution exercising the work program producers, journalists, directors, presenters, cameramen, image engineers and other jobs established by <u>the supervising body of the Company</u>.</p> <p>(3) The rights and obligations of the Company personnel are established by this Code, by the internal Rules, by the decisions <u>of the Company’s supervising body</u> and by ethical norms.</p> <p>(4) The management bodies of the Company are obligated to insure the creative personnel unfolding the work in conditions of:</p> <p>a) editorial and creative independence of the institution</p>	
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	<p>b) respect of fundamental human rights and freedoms</p> <p>c) access to information</p> <p>d) freedom of artistic and scientific creation</p> <p>e) respect of the ethical norms adopted by the personnel</p> <p>(5) The creative personnel of the Company are entitled to adopt ethical norms on unfolding journalistic work</p> <p>(6) Physically or psychologically constraining, exerting pressure upon or intimidating the creative personnel of the institution, able to hinder them to exercise their professional tasks or to damage their social or professional prestige, are punished under law.</p>	
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	<p>One proposes to introduce into the Code some articles to regulate the way of constitution, the competence and way of functioning of an Observers Council within the NPBI „Teleradio-Moldova”</p> <p>Article. The Structure of the Observers Council</p> <p>(1) The Observers Council is constituted from 15 members.</p> <p>(2) The Observers Council members are confirmed into position by the Parliament, at the proposals of:</p> <ul style="list-style-type: none"> a) parliamentary factions – 2 members, including a member on behalf of the opposition factions; b) the President of the Republic of Moldova – one member; c) The Government of the Republic of Moldova – one member (representing the national minorities;) d) The Superior Council of Magistrature – one member (professional in jurisprudence;) e) creative personnel of the institution – 2 members (one from radio and one from television;) f) creation unions (the Writers Union, Fine Artists Union, Film Makers Union, Theatre Union, Composers Union and Musicians Union) – 3 members; g) non-governmental organizations (the National Youth League, the National Olympic Committee, the Women’s Non-Governmental Organizations Forum, the Environment Movement, the Republican Veterans Organization) – 2 members; h) media associations (the Journalists Union, the 	<p>There is a unanimous opinion of foreign experts that supervising the work of the NPBI „Teleradio-Moldova” shall be done by a Council of Observers within the Company. Exerting such tasks by the Coordinating Broadcasting Council, as the draft Broadcasting Code provides for has been negatively assessed by the foreign experts. The Draft widely empowers the Broadcasting Council to supervise the NPBI „Teleradio-Moldova”, starting from appointing and dismissing the President and Directors (see: art. 57 and 60,) up to approving of its status, the organizational structures, the program service and the budget (see art. 63). Within this context, the foreign experts consider that the BCC’s responsibilities related to the broadcasting sector as a whole are incompatible with any other supervising tasks over the public broadcasting institution and recommend to separate the management of the broadcasting public service from other functions of the BCC. The Draft BC must not empower the Broadcasting Council with supervision of and appointment in the NPBI „Teleradio-Moldova”.</p>
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	<p>Independent Press Association, the Electronic Press Association “APEL”, the Press Freedom Committee, the Professional Journalists League and the Independent Journalism Centre) – 3 members.</p> <p>(3) The members of the Council do not represent the entity, upon the proposal of which they have been confirmed into position, being the guarantors of the interests of all social layers.</p> <p>Article. The structure of the body supervising the public service (another proposed model)</p> <p>(1) The Administration Council is made up of 9 members.</p> <p>(2) The members of the Superior Council are confirmed into position by the Parliament, upon the proposal of:</p> <ul style="list-style-type: none"> a) parliamentary factions – 2 members, including one on behalf of opposition parliamentary factions; b) Superior Council of Magistrature – one member; c) Academic and University Community, represented by the Rectors Council – 1 member; d) ethnicities cultural societies – 1 member; e) creative personnel of the institution – 1 member; f) creation unions (Writers Union, Fine Artists Union, Film Makers Union, Theatre Union, 	<p>The Public Broadcasting Service must be supervised by its own Observers Council. (see: Memorandum, Article 19, pag. 18 and Recommendation of the Council of Europe (1996) 10 on guaranties for the independence of the public broadcasting, adopted by the Committee of Ministers on 11 September 1996).</p>
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	<p>Composers Union and Musicians Union) – 1 member;</p> <p>g) non-governmental organizations (the National Youth League, the National Olympic Committee, the Women’s non-governmental organizations Forum, the Environment Movement, the Republican Veterans Organization) – 1 member;</p> <p>h) media associations (Journalists Union, the Independent Press Association, the Electronic Press Association “APEL”, the Press Freedom Committee, the League of Professional Journalists and the Independent Journalism Centre, Media Impact) – 1 member.</p> <p>3) The members of the Superior Council do not represent the entity, upon the proposal of which they have been confirmed into positions, being the guarantors of the interests of all social layers.</p> <p>Article. The terms of activity of the Observers Council</p> <p>(1) The members of the Observers Council are confirmed into position for a 6-year term.</p> <p>(2) When the Observers Council is first set up, as exception from the rule provided for in para. (1), the following shall be confirmed for a 3-year term:</p> <p>a) the candidates to membership of the Council, forwarded by the entities envisaged in former art. Para. (2) let. c) and d);</p> <p>b) only one of the candidates to membership in the Council, forwarded by the entities envisaged in</p>	
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	<p>former art. para. (2) let. e) – h).</p> <p>(3) The entities entitled to propose the candidates under the provisions of para. 2 let. e) – h) of the former article will specify which candidates will serve for a 3-year term.</p> <p>Article. Forwarding and appointing candidates for the Observers Council</p> <p>(1) The candidates to the membership in the Observers Council are forwarded and appointed transparently, democratically and publicly, as follows:</p> <ul style="list-style-type: none">a) the candidates to the positions of members in the Observers Council on behalf of parliamentary factions are forwarded and appointed in the plenary sitting of the Parliament;b) the candidate to membership in the Observers Council on behalf of the President of the Republic of Moldova is appointed through decree;c) the candidate to membership in the Observers Council on behalf of the Government if forwarded and appointed at the sitting of the Government;d) the candidate to membership in the Observers Council on behalf of the Superior Council of Magistrature is forwarded and appointed in a public sitting;e) the candidates to membership in the Observers Council on behalf of the creative personnel of the institution are forwarded and appointed by the creation teams from radio and television, gathered	
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	<p>in separate public sittings;</p> <p>f) the candidates to membership in the Observers Council on behalf of the creation unions, non-governmental organizations and media associations are forwarded and appointed in conformity with para. (2) - (5).</p> <p>(2) the candidates, envisaged in para. (1) let. f), are forwarded by the statutory management bodies. The creation unions, the non-governmental organizations and the media associations forward at least one candidate for the common sitting at which the candidates are appointed in the Administration Council.</p> <p>(3) The candidates, forwarded in conformity with para. (2,) are appointed at the common sitting of the representatives of creation unions or of non-governmental organizations, or of media associations, at which three representatives with the right to vote on behalf of every entity. The common sitting is convened by the entity first shown in the list of creation unions, of non-governmental associations, or of media associations.</p> <p>(4) The creation unions, the non-governmental organizations and the media associations are obligated to cooperate for appointing a number of candidates, equal to the number of seats, the candidates to which are to be confirmed on the basis of the same letter of art. (see: the Structure of the Observers Council) para. (2). In case at the common sittings of the representatives of creation unions or of non-governmental organizations, or of media associations, more candidates have received an equal number of</p>	
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	<p>votes, appointing the candidates is done by casting lots.</p> <p>(5) The decision on appointing the candidate(s) by the creation unions, non-governmental organizations or media associations are submitted to the Parliament, within 3 working days after holding the common sitting. The decision has as attachments:</p> <ul style="list-style-type: none"> a) the person's agreement to candidate to the position of a member of the Observers Council; b) the statement of compliance with the requests provided in art. (see: requirements of the members of the Council) para. (1); c) the statement of the candidate regarding the absence of incompatibilities envisaged in art. (see the incompatibilities of the function of a member of the Council) para. (1) and/or regarding the obligation to remove, within 10 days, from the moment of confirmation in position, in conformity with art. (see the way of confirming in position.) <p>(6) The candidates to the position of a member in the Observers Council are forwarded and appointed within 30 days, in conformity with the final and transitory decisions or from the moment of appearance of the function vacancy.</p> <p>Article. Requirements for the members of the Observers Council</p> <p>(1) Entitled are to candidate to the position of a member in the Observers Council the persons who:</p> <ul style="list-style-type: none"> a) are citizens of the Republic of Moldova and 	
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	<p>live in the Republic of Moldova;</p> <p>b) have higher education (graduated;)</p> <p>c) speak the official language;</p> <p>d) have no penal antecedents for crimes committed intentionally;</p> <p>e) are aged between 25 and 65 years;</p> <p>f) can effectively exercise the tasks of a member of the Council.</p> <p>(2) Advantage shall be given, under the conditions established by the law on the National Public Broadcasting Institution, to the candidates who have professional experience of at least 5 years in the broadcasting field or at least 10 years in media, confirmed through the respective remarks in the labor book.</p> <p>(3) The professional experience of the candidate, as provided in para. (2), shall correspond to activities of informing, developing, producing audiovisual programs, to activities in telecommunications and/or management experience in these areas.</p> <p>Article. The incompatibility of the function of a member in Observers Council</p> <p>(1) The function of a member of the Observers Council is incompatible with:</p> <p>a) the statute of a parliamentarian;</p> <p>b) the statute of a member of the Government of the Republic of Moldova;</p> <p>c) the statute of a member of the Broadcasting Coordinating Council;</p> <p>d) the function of General Director, Director of</p>	
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	<p>television, Director of radio;</p> <p>e) the statute of an employee of the institution, except for the candidates proposed by the NPBI personnel;</p> <p>f) if he/she is or was a member of a political party or of other political formation during the last year until the proposal to be appointed as a Council member was made;</p> <p>g) if he/she holds, or his/her blood or marriage relatives hold, shares or social shares, directly or indirectly, in commercial societies acting in the broadcasting field;</p> <p>h) if he/she has held, for the last year until the proposal to be appointed as an Observers Council member was made, the position of president, vice-president, as well as similar functions in broadcasting companies;</p> <p>i) the function, either remunerated or not, in the executive branch or the management, including the capacity of a member of consulting bodies, within other broadcasting companies.</p> <p>(2) Compatible with the function of an Observers Council member is the activity in the following areas:</p> <p>a) collaborating with specialty publications either literary, scientific or social, others than the ones published by the institution;</p> <p>b) didactic and/or scientific activity in didactic and/or scientific institutions;</p> <p>c) activity in non-governmental organizations;</p> <p>d) any other activity, the incompatibility of which with the function of a member in the Observers Council is not established by this law.</p>	
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(3) The Institution's airing audiovisual works on science, education, literature, or on any other topic, produced by or with the involvement of a member of the Observers Council and protected by the Copyright and Neighboring Rights law, is done in conformity with the conditions established by the Observers Council.

Article. Confirming the Members of the Observers Council in Their Positions

(1) The candidates to the position of a member in the Administration Council are confirmed into position by the Parliament within:

a) 60 days since the moment of adopting this Law;

b) 30 days since the moment of appearance of the function vacancy as to the candidates proposed by the Parliament, Government, President and the Superior Council of Magistrature;

c) 45 days since the moment of appearance of the function vacancy as to the candidates proposed by the other entities, than the ones from let. b).

(2) The candidates to the position of a member of the Administration Council are considered as confirmed into their positions, if the Parliament does not confirm them within 30 days, since the moment when:

a) the entities entitled to forward candidates to the position of a member in the Administration Council in conformity with art. (see: the Members in the Observers Council) para. (2) let. a) - d)

	<p>submitted the Parliament the proposal on forwarding the candidates or the information was published in <i>Monitorul Oficial</i> of the Republic of Moldova;</p> <p>b) the creation unions, non-governmental organizations, or of the profile non-governmental organizations submitted the Parliament the acts envisaged in art. (see: forwarding and appointing candidates) para. (6).</p> <p>(3) The Parliament is entitled to reject the candidate, only if there incompatibilities as envisaged in this law to exercise the function of a member of the Observers Council or if the candidate's statement regarding the absence of incompatibilities for the function of a member of the Observers Council lacks.</p> <p>Article. Revoking from the Position of a Member in the Observers Council</p> <p>(1) The members of the Observers Council may be revoked from their positions by the Parliament, upon the proposal of the Observers Council or of the President of the Observers Council, in case of:</p> <p>a) committing felony intentionally, confirmed through the ultimate sentence of the court;</p> <p>b) being appointed on the basis of false documents, presented at the contest, or of other violations of the legislation in force done while holding the contest, which decisively influenced over the result of the contest and have been proved by the ultimate sentence of the court;</p> <p>c) renouncing to the citizenship of the Republic</p>	
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	<p>of Moldova;</p> <p>d) appearance of incompatibility with the membership in the Council;</p> <p>e) not attending six sittings of the Administration Council during six calendar months and existence of proof on informing him/her on the time and venue of the sittings;</p> <p>f) impossibility to exercise the function because of health reasons for more than 3 months.</p> <p>Article. The Vacancy of the Position of a Member of the Observers Council</p> <p>(1) The vacancy of the position of a member in the Observers Council appears in case of:</p> <p>a) expiration of the Observers Council membership;</p> <p>b) electing the member of the Observers Council to the position of General Director, Television Director, Radio Director or employment into another position either remunerated or not within the Institution;</p> <p>c) resignation of the member of the Observers Council, at own will, confirmed through the decision of the Observers Council;</p> <p>d) impossibility to effectively work as member of the Observers Council during 3 consecutive months;</p> <p>e) revocation from position;</p> <p>f) reaching the age of 65 years by the member of the Observers Council;</p>	
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	<p>g) expiration of one year since the moment of withdrawing the broadcasting license of the Institution as the Institution has not worked during that period.</p> <p>(2) In case of appearance of the position vacancy, as provided in para. (1) let. a) - e), the President of the Observers Council is obligated, within three working days since its appearance, to inform the Parliament and the entity which proposed him/her about this fact.</p> <p>Article. The President and the Vice-President of the Observers Council</p> <p>(1) The President and the Vice-President of the Observers Council is elected, secretly, by the Observers Council, from amongst the members of the Observers Council, for a three-year term.</p> <p>(2) The President and the vice-president of the Observers Council are elected within 20 days since the moment of convening the Observers Council at its first sitting or since the day of appearance of the function vacancy, as provided in para. (3) let. a) - d).</p> <p>(3) The vacancy of the position of President of the Observers Council appears in case:</p> <ul style="list-style-type: none">a) resignation from the function of President of the Observers Council and/or from the function of a member of the Observers Council, confirmed through the decision of the Observers Council;b) election in the position of Director general, Director of television, Director of radio or employment in other job, remunerated or not	
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	<p>remunerated, within the institution;</p> <p>c) as provided in art. (see: Function Vacancy) para. (1) let. a), d) or e);</p> <p>d) being dismissed by the Observers Council with the votes of at least two thirds of the members of the Observers Council.</p> <p>(4) In case of vacancy of the position of President of the Observers Council, his/her duties are exerted by the vice-president of the Observers Council.</p> <p>Article. The duties of the President and of the vice-president of the Observers Council</p> <p>(1) The President of the Observers Council:</p> <p>a) convokes the sittings of the Observers Council;</p> <p>b) presides over the sittings of the Observers Council;</p> <p>c) insures the transparency of the work of the Observers Council;</p> <p>d) concludes, in accordance with the labor legislation and this Law, work contracts with the vice-president and the members of the Observers Council, with the General Director;</p> <p>e) exerts other duties, envisaged by this Law and the Rules.</p> <p>(2) In case of absence of the President of the Observers Council, his/her competences are exercised by the vice-president of the Observers Council.</p> <p>(3) The Institution insures the President of the Observers Council and the secretariat of the Observers Council, working conditions within the premises of the</p>	
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institution, funded from the budget of the Observers Council.

(4) In order to exercise his/her duties, the Chairman of the Observers Council adopts orders obligatory only in relation with the secretariat of the Observers Council.

(5) Other regulations regarding the activity of the President of the Observers Council and the secretariat of the Observers Council are established in the Rules.

Article. The Sitzings of the Observers Council

(1) The way of activity of the Observers Council is the sitting which is convened in accordance with the Rules, at least once within two calendar weeks.

(2) The sittings of the Observers Council are public. The Observers Council is not entitled to limit the media's access to the sittings of the Observers Council.

(3) The disposition of the President of the Observers Council regarding the convocation of the sitting shall be sent to all the members of the Observers Council at least 5 days before the day the sitting is held.

(4) The decisions of the Observers Council are passed with the vote of at least eight members, unless this Law provides for more votes.

(5) Organizing and insuring the activity of the Observers Council are done by the President of the Observers Council and the secretariat of the Observers.

(6) While exercising its attributions the Observers Council passes decisions and recommendations.

Article. The competences of the Observers Council

	<p>(1) The Observers Council is the supreme supervising body of the institution.</p> <p>(2) The Observers Council passes detailed regulations in order to specify the goals of the institution.</p> <p>(3) The Observers Council exercises the following exclusive competences:</p> <ul style="list-style-type: none"> a) adopts the Rules on the organization and functioning of the institution, the modifications and additions to those and the Ethics Code of the NPBI; b) earmarks and submits for approval the Tasks and Missions Book of the institution or the modifications and additions to it; c) passes decisions on establishing or dismantling the territorial studios of the Institution and/or the correspondent networks of the Institution, as well as on their Rules; d) upon the proposal of the General Director passes, in accordance with the Rules, the organizing chart of the institution which shall also comprise the organizing charts of the territorial studios and of the correspondents networks; e) organizes the contest for the position of General Director and passes the decision on appointing him/her; f) organizes the contest for the position of Television Director and passes the decision on appointing him/her; g) organizes the contest for the position of Radio 	
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	<p>Director and passes the decision on appointing him/her;</p> <p>h) examines and approves of the draft budget of the Institution, upon the proposal of the General Director;</p> <p>i) under this Law, forwards the Government and the Parliament requests on allocations, to be included into the state budget;</p> <p>j) examines and approves of the annual accounting balance sheet;</p> <p>k) examines and approves of the agreements of estranging the assets of the Institution, exceeding the value of 50,000 lei;</p> <p>l) earmarks the co-operation agreements of the Institution, as well as the transactions exceeding 100,000 lei;</p> <p>m) approves of and presents the Parliament the annual report, which shall is published on the web page of the institution and published within 30 days since being approved of.</p> <p>(4) The Observers Council exercises any other competences provided by the legislation in force and by the Rules and adopts decisions on any other measures related to the activity of the institution, except for, as provided by this law, the ones that make the competence of other managing bodies of the Institution.</p> <p>(5) The attributions referred to in para. (3) may not be delegated to other management bodies of the Institution.</p> <p>(6) The decisions of the Observers Council, taken in accordance with its competences, are compulsory for</p>	
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<p>(1) The Executive Board carries out the management of the Company. The Executive Board consists of:</p> <ul style="list-style-type: none"> - The President of the Company; - TV and Radio directors who are Deputy-Presidents of the Company from the office; - TV and Radio executive producers; - Two financial specialists. <p>(2) The Council appoints the President and the directors with two thirds of the votes respectively. A person can be appointed only with his/her written consent.</p> <p>(3) Within 10 days of their appointment the elected President and directors propose other four members of the Executive Board to the Council for confirmation.</p>	<p>(1) The Management Committee exercises, as provided by this Law and the Rules, the running management of the Institution, being subordinated to the Observers Council and providing assistance to the General Director.</p> <p>(2) The members of the Management Committee are the General Director, the Television Director and the Radio Director, heads of subdivisions of the Institution, in conformity with the Rules.</p> <p>(3) The Management Committee has the following exclusive competences:</p> <ul style="list-style-type: none"> a) works out the programming policy and recommendations on constituting the structure and the schedules of radio and television; b) drafts and/or earmarks other draft acts subject to approval by the Observers Council; c) carries out and/or supervises the fulfillment of the decisions of the Observers Council; d) adopts and promotes the Concept of Technical Development of the Institution; e) examines and earmarks the staff structure, the labor norms which are approved of by the Observers Council; f) approves of norms on the relationships of technical, economic, commercial, administrative, financial, legal or other kind of order, which are 	<p>Code, see: OSCE comments of 10 May 2006, pag. 18.</p>
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<p>(4) The Council shall confirm the candidates for the</p>	<p>established among different structures of the Institution, as well as among those ones and the third parties;</p> <p>g) insures the execution of the budget of the Institution, carrying out the formation and distribution of the budgets of the Observers Council, of the territorial studios and of the correspondents networks;</p> <p>h) approves of the competences on negotiating and incurring expenditures of any kind, including investments, financial and commercial transactions;</p> <p>i) forwards the Administration Council proposals on estranging or giving for utilization goods which are not necessary for the Institution any longer and the maintenance expenditures of which are not justified, under the law;</p> <p>j) establishes the prices and tariffs for own products and services provided in the broadcasting field, including the ones for advertising;</p> <p>k) approves of incurring any kind of expenditures and commercial and financial transactions, in accordance with the Rules and with other acts adopted by the Observers Council;</p> <p>l) analyses the three-quarterly report of the Institution on its economic activity and approves of measures unfolding further work;</p> <p>m) earmarks normative act drafts, which are to be approved of by the General Director;</p> <p>n) exercises other competences belonging to it in conformity with the legal provisions and the Rules.</p> <p>(4) The Management Committee convenes weekly</p>	
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positions of members of the Executive Board within 10 days.

(5) If the proposed candidate is not confirmed by the Council, the President and the Director of the corresponding station shall propose another candidate according to the provisions of the present Article.

(6) The Council shall announce a contest for the positions of President of the Company and directors of Radio and TV stations. The Council shall develop the Regulations of contest carrying out in an ad-hoc manner.

(7) The Council shall publish an announcement in "Monitorul Oficial" about the dates of the contest and candidates requirements.

(8) The contest shall be carried out within 30 days from the date when the announcement about the contest was published in the "Monitorul Oficial".

(9) In order to assure the transparency of the contest, the names of the candidates, their portfolios, and their projects of intentions on the development strategies of public radio broadcaster, as well as the Regulations for the contest, which shall include the requirements for the candidates, shall be made public.

(10) The deadline for submitting the files of the candidates for participating in the contest expires ten days before the end of the contest.

(11) The work agreements are concluded by the Council together with the President of the Company

upon the request of the General Director.

Article. The General Director

(1) The General Director is appointed for a 5-year term.

(2) The General Director may be dismissed, before the expiration of his/her term, with the vote of two thirds of the members of the Observers Council.

(3) The competences of the General Director cover all the management issues related to the day-to-day activity of the Institution, except for the ones making the competence of the Observers Council, of the Management Committee, of the Televisions Director and the Radio Director, under this Law.

(4) The General Director insures the fulfillment of the decisions of the Observers Council and of the Management Committee.

(5) The General Director has the following exclusive duties:

a) chairs the sittings of the Management Committee;

b) insures, within the limits provided by the Rules, the day-to-day management of the institution;

c) insures the execution of the decisions of the Observers Council, as well as the agreements concluded by the institution, under this law;

d) approves of, upon the proposal of the Management Committee, orders on the good functioning of the technical equipment of the Institution, makes specific commercial, financial-

and Radio broadcasting and television Directors, establishing the rights, obligations, and the salary of the members, the procedure of amending and cessation of the agreements, and other work related issues.

Article 58. Requirements towards the Members of Executive Board

The President of the Company and other members of the Executive Board shall to meet the following requirements:

- a) be professionals in the field of public audiovisual, have managerial skills;
- b) have completed higher education;
- c) be citizen of the Republic of Moldova with an active legal capacity and sate language proficiency.

Article 59. Incompatibilities with the position of the President of the Company and member of Executive Board

(1) The position of the President of the Company, as well as member of the Executive Board is incompatible with:

- a) capacity of member of a management body or employee, partner, shareholder, or owner of a private radio broadcaster;
- b) capacity of member of a party or of other political associations;
- c) position of member of the Government of the Republic of Moldova, Member of the Parliament or any position remunerated outside the Company;

bookkeeping operations, the recruitment, training and re-training of the staff;

e) approves of, as provided by the legislation in force the hiring and dismissing of the staff of the Institution and appoints the heads of departments and of other units directly subordinated, on contest basis (would it be possible that this duty belong to the Observers Council?);

f) decides on sending delegations or personally attends to domestic or international reunions, business or training meetings of interest for the institution.

(6) The General Director exercises other attributions, resting with him/her in accordance with this Law and the Rules.

(7) The General Director can delegate a part of his/her competences to the Television Director and the Radio Director.

(8) In exercising his attributions the General Director issues orders.

(9) The salary of the General Director is established by the Observers Council at an amount varying between 3 and 5 monthly average salaries of the creation personnel of the Institution, calculated in relation with the last three months of work of the Institution.

The Television Director and the Radio Director

Article. The Television Director and the Radio Director

<p>d) position of member of the Council.</p> <p>(2) The position of the President of the Company and member of the Executive Board is compatible with the activity in the field of education, science, creation in specialized publications with a literary, artistic, scientific or social nature if the last does not contravene to the interests of the institution which he represents.</p> <p>Article 60. Mandate of the President and Vice-President of the Company</p> <p>(1) The mandate of the President and Deputy-Presidents of the Company is valid for 5 years.</p> <p>(2) The mandate ceases before the expiry of its term in case of resignation or dismissal by the Council in case of:</p> <ul style="list-style-type: none"> a) conviction through a final court sentence; b) death; c) The Council expresses its mistrust in the President or member of the Executive Board (as a response to the notification of the other members of the Executive Board, of the employees of the institution or after a self-notification), with two thirds of the votes of its members; d) deprivation of the citizenship of the Republic of Moldova; e) amendment of the legislative basis for the appointment of the President or members of the 	<p>(1) The Television Director is appointed for a 5-year term.</p> <p>(2) The Radio Director is appointed for a 5-year term.</p> <p>(3) The Television Director and, respectively, the Radio Director may be dismissed, before the expiration of their term, with the votes of two thirds of the members of the Observers Council.</p> <p>(4) The competence of the Television Director is the administration of the creation process of the television of the Institution.</p> <p>(5) The competence of the Radio Director is the administration of the creation process of the radio of the Institution.</p> <p>(6) The Television Director and the Radio Director have the following exclusive competences:</p> <ul style="list-style-type: none"> a) insure, within the boundaries established by this Law and the Rules, the current administration of the creation process of the television/radio; b) forward to the General Director, under the law, proposals on hiring and dismissal of the personnel of the television/radio; c) approve of the competences of the units of the television/radio; d) adopt orders on the mode of organizing and functioning of the management councils of the structural subdivisions of the television/radio. <p>(7) The Television Director and the Radio Director also exercise other competences, which belong to them according to this law, the Rules and the orders of the</p>	
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<p>Executive Board or based on the work agreement.</p> <p>(3) If the mandate of the President or TV or Radio directors ceases before term, the Council announces a contest for the position according to the provisions of Article 56.</p> <p>Article 61. Structure and Activity of Company Management</p> <p>(1) The activity of the Company is organized by the Executive Board.</p> <p>(2) In case of temporary impossibility to exercise the functions of the President of the Company, his/her functions are exercised by one of the Vice-Presidents appointed at the order of the President of the Company.</p> <p>(3) If the President of the Company disagrees with the decision of the Council, he/she can address a motivated request for the re-examination of the decision to the Council. Within 10 days at the most, the Council is required to discuss the request of the President of the Company. After the repeated adoption of the decision with a majority of the votes of the members of the Council, the President of the Company shall have to comply with it.</p> <p>(4) Once in six months the President of the Company by mutual agreement of TV and Radio directors presents a general study on the economic activities and the economic situation of the Company and immediately informs about any worsening of the economic situation of the Company, as well as of any other changes of the circumstances related to the</p>	<p>General Director.</p> <p>(8) In exercising their competences, the Television Director and the Radio Director issue orders.</p> <p>(9) The salary of the Television Director and, respectively, of the Radio Director is established by the Administration Council, in amount between 3 and 4 average monthly salaries of the creation personnel of the Institution, calculated in relation with the last three months of work of the Institution.</p>	
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economic activities of the Company.

Article 62. Attributions of the President of the Company

(1) The President of the Company carries out general management of the institution, is responsible for program services, as well as for efficient management of the allocated budgetary funds.

(2) The President represents the Company in its relations with other institutions and organizations of the Republic of Moldova and from abroad, signing contracts and agreements in the name of the Company.

(3) The President of the Company exercises his/her functions until his/her successor is appointed.

Article 63. Attributions of the Executive Board

(1) The Executive Board approves:

a) the standards, work instructions for exploitation, security and maintenance of personal networks of transmitters and relays and of the possessed equipment,

b) norms that have as object the economic, commercial, technical, administrative, legal, and financial relations or any other kind of relations, which are established among different structures of the institution, as well as among the latter and third parties,

c) employment by conclusion of work agreements, as well as the dismissal of employees, according to

<p>the legislation in force and to the Status of the Company, recruitment, training and advanced training of the staff,</p> <p>d) practise of any other attributions according to the Status and that do not contravene to the legislation in force.</p> <p>(2) The Executive Board issues and presents the following to the Council for adoption:</p> <p>a) Statute of the Company,</p> <p>b) Organizational structure of TV and Radio stations of the Company (the structure and the staff),</p> <p>c) Development policies, including the general project of technical re-equipment for a period of 10 years and explanatory notes on the institution, reorganization or cessation of the activity of the structural units of the station,</p> <p>d) Program service,</p> <p>e) Budget proposals, annual balance sheet,</p> <p>f) Task Notebook.</p> <p>(3) The Executive Board has the competence to decide on all the situations of administrative nature, which are not in the competence of the Council.</p>		
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	<p>One proposes to introduce a new institution – the ombudsman of the public service.</p> <p>The Ombudsman of the Public Service Article. The Mandate of the Ombudsman of the Public Service</p> <p>(1) The Ombudsman of the public service is confirmed into position, on a contest basis, by the Observers Council, in accordance with the Rules.</p> <p>(2) The Ombudsman of the public service is confirmed into position for a 5-year term, which can be prolonged once for the same person.</p> <p>(3) The Ombudsman of the public service can be dismissed by the vote of two thirds of the Observers Council.</p> <p>(4) The Ombudsman of the public service works in accordance with the Rules.</p> <p>(5) While exercising the mandate, the Ombudsman of the public service does not have the right to unfold other activities, except for the didactic and scientific ones.</p> <p>(6) The Ombudsman of the public service does not have the right to hold management positions within the Institution within three years since the expiration of his/her term.</p> <p>(7) The Ombudsman of the public service is independent in his/her work, being subordinated only to the Observers Council, under this Law.</p>	<p>See: OSCE comments of 10 May 2006, pag. 19.</p> <p>The public service ombudsman would be a bridge of certain link between the public service and the public. The information disputes that can appear between the public service and its beneficiaries could be friendly solved at the ombudsman's level, without reaching the court.</p>
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Article. The Competences of the Ombudsman of the Public Service

(1) The Ombudsman of the public service:

a) makes researches, case studies and office inquests on the observance of the principles of the NPBI's organization and activity and informs the Observers Council upon their results;

b) examines and registers in the Register of notifications and suggestions concerning the Institution's programs the complaints, notifications, letters etc., on a regular basis, informing the Observers Council and/or other management bodies of the Institution and/or the creation personnel on the object of those;

c) examines and speaks at the sitting of the Observers Council on conflicts between the management bodies and the creation personnel;

d) examines and puts forward recommendations on solving the misunderstandings having as object the right to the respect for the person's honor, dignity and professional reputation and voices on the necessity of the Institution's

broadcasting/publishing the denial and the reply;

e) exercises other attributions provided by the Rules.

(2) While examining and solving misunderstandings, as provided in para. (1,) the Ombudsman of the public service is not entitled to represent the institution and/or other conflicting parties in the court.

<p>Article 65. Property of the Company</p>	<p>Article. The Transparency in the Work of the Ombudsman of the Public Service</p> <p>(1) The Ombudsman of the public service presents the Observers Council an annual report on his/her activity.</p> <p>(2) The report shall contain:</p> <ul style="list-style-type: none"> a) data on the researches, case studies and office inquests carried out; b) the main issues regarding the insurance of pluralism and diversity in covering the public interest; c) data on the main misunderstandings between the management bodies of the institution and the creation personnel and the way they were solved; d) other information as provided by the Rules. <p>(3) The annual activity report or a resume is made public on the NPBI's web page.</p> <p>Article 65. To be re-worded in conformity with the legislation in force</p>	<p>Article 65. There is confusion of issues of the Constitutional Law and Corporative Law. The regulating competences in broadcasting are part of the Constitutional law, and the competences of the Supervising Council of the public institution are part of the Corporative Law scope. These two law scopes are based on different principles and criteria. That is why, combining their competences within one institution, practically, is not possible.</p> <p>- Mistreated are the provisions from the Law on property. There is no „<i>Company's assets.</i>” The Moldovan legislation recognizes two types of ownership: private and public. The draft Code recognizes „<i>the property of</i></p>
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		<p><i>the public Company.</i>” As a matter of fact, the Company is given public property for public economic management.</p> <p>- They do not observe the provisions of art. 60 of the Civil Code of RM on the capacity of using the legal entity of public right. <i>„The legal entity with non-profit goal (which does not pursue the goal of obtaining economic profit) may carry out only activities envisaged by law and by the constitution act”.</i> Therefore, the public Company by no means may have the competences envisaged in art. 65 of the draft Code, as there would be: <i>offering credits, insuring the accomplishment of its obligations through all its property, transmitting property to other entities etc,</i> because of the simple reason, that the main statutory goal of the public Company consists in <i>conceiving, producing and airing audiovisual programs.</i></p>
<p>Article 66. Budget of the Company</p> <p>(1) The financial activity of the Company is achieved based on the own budget.</p> <p>(2) Budget execution statements shall be presented to</p>	<p>Article 66. The Budget of NPBI „Teleradio-Moldova”</p> <p>(1) The financial activity of the „Teleradio-Moldova” institution unfolds on the basis of its own budget .</p> <p>(2) The Parliament guarantees the insured funding for the Institution’s work and corresponding needs.</p>	<p>See: OSCE comments of 10 May 2006, pag. 20.</p>

<p>the Parliament along with the annual reports with the notice of the Council and shall be published.</p> <p>(3) The Company is financed from the following sources:</p> <ul style="list-style-type: none"> a) the subvention allocated from the state budget, established by the Parliament in line with the legislation in force and taking into account the draft budget of the Company, drawn up by the Executive Board; b) donations and sponsorships for special projects; c) funds obtained from granting the right to use and transmission of the property, including broadcasts; d) revenues obtained as a result of organizing public events according to the object of activity of the Company; e) other financial sources the legal nature of which does not contravene to the provisions of the present Code and to the legislation in force; <p>(4) The Executive Board draws up the draft budget of the Company.</p> <p>(5) The approved budget and the reports on its implementation are made public.</p>	<p>(3) The institution makes up its funding sources from:</p> <ul style="list-style-type: none"> a) allocations from the state budget, established by the Parliament in accordance with the legislation in force and the Tasks and Missions Book of the institution; b) special taxes; c) sponsorships and donations; d) incomes from advertising and gained in its economic-financial activity; e) other financial sources, envisaged by the legislation in force. <p>(4) The allocations from the state budget shall cover for the institution's expenditures necessary to:</p> <ul style="list-style-type: none"> a) pay for renting and/or using transmitters, radio-relays and television/radio circuits, including satellite links; b) capital investments and re-equipping; c) producing the radio and/or televised programs stipulated in the Tasks and Missions Book of the Institution; 	
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	<p>d) broadcasting the radio and/or televised programs on a territory not smaller than 95% of the state's territory;</p> <p>e) producing and broadcasting radio and/or televised programs destined to foreign countries;</p> <p>f) other expenditures provided in the Tasks and Missions Book of the Institution.</p> <p>One proposes to include two new articles with the following contents:</p> <p>Article. Using the financial funds of the Institution</p> <p>(1) Using the financial funds of the Institution shall be done in a transparent manner, observing the provisions of the Tasks Book and the decisions of the Observers Council.</p> <p>(2) The financial funds of the institution gained from other sources than the allocations from the state budget, not used during the financial year, are used in the next financial year.</p> <p>(3) The usage of the financial funds of the Institution is subject to control on behalf of the Auditing Chamber, as provided by the legislation in force.</p> <p>Article. Special Taxes</p> <p>(1) The special taxes are established in the state budget law, are paid in accordance with the legislation in force and are managed by the Institution.</p> <p>(2) The special taxes can be made of:</p> <p>a) taxes established for buying-selling audio-video</p>	
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	<p>devices;</p> <p>b) taxes established for using audio-video devices in the cars registered in the Republic of Moldova;</p> <p>c) other taxes established by the Parliament.</p>	
<p>In the draft Code there are no provisions regarding the local public broadcasting and its economic and financial activity.</p>	<p>One proposes to introduce some articles envisaging the local public broadcasting.</p> <p>Article. The business-financial principles</p> <p>(1) The local public authority is obligated to insure the practical realization of the principle of guaranteed funding of the institution in direct form (taxes) and indirect form (budget allocations.)</p> <p>(2) In order to carry out its functions, the institution shall use the assets rendered to it for economic management, in accordance with the legislation in force.</p> <p>(3) The institution works on a non-profit basis, the means obtained as a result of the work of the institution shall be distributed only for achieving the statutory goals of the institution, in conformity with the provisions of this law and of the internal Rules.</p> <p>(4) The institution works on the basis of its own budget, approved of by the local public authority in conformity with the provisions of the law.</p> <p>(5) The public and independent character of the work of the institution is insured through funding, from the budget of the territorial-administrative unit, in ratio of not less than 70% of the running needs</p> <p>(6) The economic activity of the institution is subject to</p>	

controls on behalf of the entitled state bodies, within the limits of this law and the provisions of the statute of the institution.

Article. Funding Sources

- (1) Sources of funding the work may be:
- a) the budget of the administrative-territorial unit;
 - b) incomes from providing advertising and other services;
 - c) incomes from selling the right to broadcast and other rights on its own products;
 - d) allocations and subsidies from the state budget;
 - e) means from sponsorships and donations;
 - f) special taxes;
 - g) other legal incomes.

(2) The results of the business and financial work of the institution are mirrored in the accounting balance sheet, compiled in accordance with the provisions of the law.

(3) The annual balance sheet is approved of through the decision of the Administration Council not later than the 25th February of the next year.

Article. Using the financial means

(1) Using the financial means of the institution shall be done transparently.

(2) The funds of the institution, obtained from other sources than the allocations from the budget, not used during the financial year, are used by the institution the next financial year, in conformity with the Rules.

	<p>(3) Using the funds of the institution is subject to controls on behalf of the Auditing Court, under the law.</p> <p>Article. Special taxes</p> <p>(1) The special taxes are established through the law of the state budget, are paid in conformity with the legislation in force and are managed by the institution.</p> <p>(2) The special taxes may be constituted from:</p> <ul style="list-style-type: none">a) taxes established for selling-buying audio-radio devices;b) taxes established for using audio-video devices in cars registered in the Republic of Moldova;c) other taxes established by the Parliament. <p>(3) The local public administration is entitled, under the law, to establish, in the local budget, special local taxes to be rendered to the budget of the institution.</p>	
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Part III. Private Broadcasters

3.1. Reasons of principle

The national legal framework shall stipulate coherently and shall insure that the private broadcasters:

- will work in conditions of fair competition with the radio/TV public service;
- will contribute to create a diverse and pluralist spectrum of offers beneficiaries;
- will follow a simplified and transparent procedure of obtaining the broadcasting license and of prolonging it;
- will have certain commitments before their offer' beneficiaries, because the broadcasters use radio frequencies and TV channels which are part of the national patrimony;
- will work in conditions of free access and fair competition on the advertising market;
- will be encouraged to maintain and develop their business;
- will observe the copyright and the neighboring rights;
- will have access to foreign investments;
- will work fairly and transparently.

3.2. Recommendations

The proposals and recommendations from the table below refer not only to art. 67 of the draft Code, but also to other which, directly or indirectly, envisage the private broadcasters.

DRAFT AUDIOVISUAL CODE	PROPOSALS /RECOMMENDATIONS	ARGUMENTS/REMARKS
<p>Article 2. Meaning of Used Terms</p> <p>f) <i>Service provider</i> – any legal entity that offers program services to the public through any means of electronic communication, including satellite, cable, or ether on the basis of contracts with radio broadcasters or other providers;</p> <p>k) <i>Own production</i> – audiovisual works created and produced exclusively by the radio broadcaster using their own technical, financial and intellectual means or means especially attracted for this purpose on the basis of a contract.</p> <p>Article 6. Guarantee of Morality and Protection of Minors</p> <p>(2) It is prohibited to broadcast programs that might severely affect the physical, mental or moral development of minors, especially programs that contain pornography, unjustified violence or licentious language.</p> <p>(3) The programs provided for in p. (2) above can be broadcast only outside the prime time, after the presentation of an audio or graphic notification ensuring the presence of a visual warning sign during the entire program.</p>	<p>Let. f) shall be worded as follows:</p> <p>f) <i>service distributor</i> – a broadcaster who offers the public an offer of cable program services, production of third parties, including from abroad, on the basis of contract relationships with broadcasters or with other service distributors.</p> <p>Let. k) shall be worded as follows:</p> <p>k) <i>own production</i> – audiovisual production produced by a broadcaster by using own technical, financial and/or intellectual means, or means attracted with this purpose on a contract basis.</p> <p>Article 6. Guarantee of Morality and Protection of Minors</p> <p><i>One proposes to merge points (2) and (3) in the following wording: „The programs that may gravely affect the physical, mental or moral development of minors, especially the ones containing unjustified violence or licentious language may be aired only after presenting an acoustic or graphical announcement, as during the whole duration of the program a visual warning symbol shall be shown, while the programs for adults shall be aired outside the peak hours, through restricted access equipment, during nocturnal hours (24.00-06.00)”.</i></p>	<p>let. f) The statute of „<i>service distributors</i>” may be obtained only by a legal entity and only after accomplishing a procedure established by law. In the capacity of “means of electronic communication” for „<i>the service distributors</i>” in the reality from Moldova may be only the cable.</p> <p>let. k) – the wording “conceived audiovisual works” practically may generate problems in assessing whether it is <i>own production</i> the production which was not conceived by the broadcaster, but only produced by it or on its order.</p> <p>In the proposed wording there are clearer and more exact regulations, specifying what the nocturnal hours are.</p>

<p>Article 7. Political and Social Balance and Pluralism</p> <p>(4) In order to ensure the observance of the principles of social and political balance, equidistance and objectivity within the radio broadcasters’ news programs, they shall place each news report so as:</p> <p style="padding-left: 40px;">a) The news report does not exceed the duration of one minute thirty seconds;</p> <p>Article 12. Protection of National Information Space</p> <p>Radio frequency spectrum and terrestrial radio-electric waves are the state national heritage that can be used only in compliance with the law.</p> <p>Article 18. Respecting Copyright and Connected Rights</p> <p>(1) Broadcast and re-broadcast of program services takes place obligatory respecting</p>	<p>Article 7. Political and Social Balance and Pluralism</p> <p>(4) One proposes to exclude (point. A) of art.7.</p> <p>Article 12. Protection of National Information Space</p> <p>(1) a mechanism of separating the legal competences between the BC and the frequency regulating agency regarding the radio frequencies destined to broadcasting shall be introduced;</p> <p>(2) the number of frequency spectrum for national-level TV and Radio networks shall be determined.</p> <p>(3) Clear conditions regarding the procedure of planning and coordinating newly-created frequency spectra for the national-level TV and Radio networks shall be established.</p> <p>Article 18. Respecting Copyright and Neighboring Rights</p> <p>(1) Transmitting and re-transmitting the program services is done with the compulsory observance</p>	<p>The duration of a news story is a creation issue and cannot be regulated by law</p> <p>- Art.12 is too superficial and does not establish the regulations necessary to attain the goal stated in its title.</p> <p>- the notions used do not exactly correspond to the special law – the Telecommunications law.</p> <p>- Nothing is said about the process of planning and coordinating the frequencies and the frequency spectra for broadcasting, the public and transparent character of this process is not specified.</p> <p>The neighboring rights include the right over the program, and the copyright – the right over the art work.</p> <p>“Transmission” instead of “airing ”, because in</p>
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<p>copyright and connected rights, as well as other rights on programs or works of art contained in them in compliance with the legislation in the field. Legislation norms related to copyright and connected rights protection is adequately applied to the extent they do not contravene with the provision of this Code.</p> <p>(2) Broadcasters are obliged to sign agreements either directly with the holders of copyright or connected rights or with their representatives or organizations managing copyright or connected rights on collective principles, according to the authorizations and licenses held.</p> <p>(3) The provisions of par. (2) of this article do not apply to entities that re-broadcast program services on the basis of agreements legally signed with broadcasters or other holders of</p>	<p>of the copyright and the neighboring rights in conformity with the legislation on the copyright and neighboring rights.</p> <p>(2) The broadcasters and the service distributors are obligated to sign contracts, either directly with copyright and/or neighboring rights holder, including the service distributors – with broadcasting organizations, or with their representatives or with the administration bodies on collective principles of patrimony/ownership rights.</p> <p>(3) To be excluded</p>	<p>art. 2 the first term is defined.</p> <p>Art.11 bis of the Bern Convention, to which Moldova is part, provides that the Authors of literary and artistic works enjoy the exclusive right to authorize 1) transmitting, on radioelectric way, their works or their being communicated through cableless transmission means of signal, sounds or images and 2) any transmission through cable or re-transmission of the radioelectric communication of a work, when this communication is done by other organization than the initial one. These rights are infringed through para. (2), (3) and (4) of art. 18. It is not sufficient to sign the contract with only one category of right holder in order to recognize as legal the activity of broadcasters. For example, it is not sufficient to have a contract with the performer or with the phonogram producer, which are holders of neighboring rights. The consent of the author is necessary.</p> <p>(3) because here the entity re-transmitting program services is other organization than the initial one (specified above in art.11 bis of the Bern Convention,) and the broadcaster is the</p>
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<p>rights on re-broadcasted program services.</p> <p>(4) Re-broadcast of a program service without an agreement signed with the broadcaster, provider or other holder of the rights on the re-broadcast program service is considered a violation of copyright and connected rights and is sanctioned correspondingly.</p>	<p>(4) Re-transmitting a program service lacking a contract concluded with the broadcaster, or other holder of rights over the re-transmitted program service, as well as lacking a license issued by the organization administering on collective principles copyright and neighboring rights constitutes an infringement of the copyright and neighboring rights and is punished correspondingly.</p>	<p>initial organization. Thus it is mistakenly stipulated that by signing a contract between these ones (broadcaster and program distributor) it is not necessary any more a contract between the distributor and the author (or the author's representative.)</p> <p>(4) as the European Directive 93/83EEC recommends in art. 9 (entitled Exerting the re-transmission rights) that: "the Member State shall insure that the right of the holder of copyright and the holder of neighboring rights (here, performers and phonograms producers) to grant authorization to re-transmit should be exerted only through an organization administering on collective principles." This has been regulated this way because of practical reasons: it is practical impossible for the service distributors to identify, within the re-transmitted programs, the authors, moreover, signing direct contracts with them.</p> <p>Stipulating that it is sufficient to sign contracts with holders of neighboring rights (performers, phonograms producers, broadcasting organizations) is obvious that there is an infringement of the authors' rights provided by the Bern Convention. Moreover, in the first case (para.2), to zero is reduced the principle (provided also in the Moldovan aw on copyright and neighboring rights - art.26 para. (1)), which provides that the neighboring rights are exercised without damaging the copyrights. It would be the</p>
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<p>(5) Program service consumers who use legally received television or radio programs to increase the comfort of tenants or visitors of public places (hotels, villas, sanatoriums,</p>	<p>(5) to be excluded</p>	<p>example of the broadcaster (broadcasting organization) who is being recognized the neighboring rights over its programs only in the moment it obtained the consent of authors for the right to include their works in that program; As far as para. (3) and (4) go, obvious is neglecting the author's right to authorize the re-transmission of his/her work, a right expressly provided also by European Directive 93/83EEC of 27 September 1993 "On coordinating some norms regarding the copyrights and neighboring rights applicable to the satellite transmissions and cable re-transmissions" which recognizes the author's right to authorize the re-transmission of his/her work. See art. 8 of the mentioned directive, entitled The Right to cable re-transmission, which stipulates: "The Member States, in the case when programs from other member states are re-transmitted through cable on their territories, shall insure that the corresponding copyrights and neighboring rights should be respected and that such a re-transmission should take place on the basis of individual or collective contracts among authors, holders of neighboring rights and cable operators."</p> <p>(5) Art. 11 of the Bern Convention provides that "The authors enjoy the exclusive right to authorize i) the public performance of their works, including performing them through any means and ways; ii) any public communication of the performance of his/her work."</p>
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<p>restaurants, bars, etc.) are exempted from paying copyright or connected rights remunerations on the condition that there is no separate payment for watching or listening to these services.</p> <p>(6) Non-observance of the obligations stipulated in this article is sanctioned in compliance with the legislation in the field of copyright and connected rights.</p> <p>(7) The exclusive right to broadcast or re-broadcast the program service on the territory of the Republic of Moldova is registered with the Coordinating Council of Audiovisual that verifies the legality of the latter. The Coordinating Council of Audiovisual publishes the list of audiovisual institutions that have exclusive rights to broadcast or re-broadcast certain program services on the territory of the Republic of Moldova, specifying the names of program services – the object of the exclusive right.</p>	<p>(6) to be excluded</p> <p>(7) The Broadcasting Coordinating Council:</p> <ul style="list-style-type: none"> - Registers the contracts legalizing the transmission and/or re-transmission, including the ones providing for ceding the exclusive rights; - Publishes the list of broadcasting organizations who have exclusive rights to transmit/re-transmit with the specification of the name of the program service by which the object of exclusive right is identified. <p>Paragraphs (4) and (7) become paragraphs (3)</p>	<p>Infringed are the rights of performers and of phonograms producers who, just as the author, have the right to remuneration for any public performance of their objects of neighboring rights (performances /phonograms.)</p> <p>The right of authors, performers and phonograms producers to remuneration for the public communication is restricted to cases of paid entrance, but such a restriction is applicable only in relation to the neighboring right of the broadcasting organization – to authorize the transmission of its programs (object of neighboring right) in a public venue only in the case of collecting an entrance fee.</p> <p>(6) it is but a repetition of para. (4)</p> <p>(7) The exclusive broadcasting rights shall pour from the respective contracts.</p>
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<p>Article 21. Broadcasting Conditions for Commercials or Teleshopping</p> <p>(1) Commercials and teleshopping are broadcasted in blocks, thus becoming easy to be identified by means of corresponding marks and separated by audio or visual sings from other program service parts.</p> <p>Article 26. Broadcasting License Transfer</p> <p>(1) The broadcasting license can be transferred to another radio broadcaster only with the consent of the Coordinating Council of the Audiovisual and with the condition that the new holder assumes all obligations that arise from the license.</p> <p>(2) The Council adopts the decision on broadcasting license transfer within 15 days from the date of submitting the request.</p>	<p>and, respectively (4)</p> <p>Article 21. Broadcasting Conditions for Commercials or Teleshopping</p> <p>(1) The advertising and the teleshopping are broadcast compiled, and are easily identified through corresponding marks and are separated from other parts of the program service through vision and sound signals of broadcasters.</p> <p>To re-word as follows:</p> <p>Art.26. Broadcasting License Transfer</p> <p>(1) Replacing the holder of broadcasting license may be done only on the basis of the respective decision of the BC, without modifying the contents and validity term of the license.</p> <p>(2) Replacing the broadcasting license holder is done on the basis of the requests from the involved entities and the contract, concluded between them, by issuing a new license on the name of the new holder for the time period provided by the initial license.</p> <p>(3) The new license holder is obligated to submit, to the BC, concomitantly with the request, all the documents and information required by the contest procedure to get the license.</p>	<p>The advertising, including at radio-TV regulated by a special law. It necessary to coordinate the provisions of the Code with the provisions of the law, and to use the notions already existent in the legislation in force.</p> <p>According to the legislation in force the broadcasting license is not a good and therefore cannot be ceded.</p>
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<p>Article 27. Broadcasting License Withdrawal</p> <p>(1) d) does not begin to broadcast the program service for not more than 6 months after the granting of the broadcasting license;</p> <p>Article 28. Re-Broadcasting Authorization Granting</p> <p>(1) Any individual or legal entity, radio broadcaster and/or service provider resident of the Republic of Moldova, interested in re-broadcasting the program services belonging to other producers, can request the Council to grant a re-broadcasting authorization for a certain program service;</p> <p>Article 31. Technical License Granting</p> <p>(2) The holder of a broadcasting license shall request a technical license not later than within 3 months after obtaining the broadcasting license.</p> <p>(4) The technical license is valid during the</p>	<p>(4) The BCC decision on the applications on changing the license holder is to be adopted within 30 days since submission, without announcing a new contest.</p> <p>Article 27. Broadcasting License Withdrawal</p> <p>(1) d) the broadcaster does not start broadcasting programs within at most 18 months after obtaining the broadcasting license.</p> <p>Article 28. Re-Broadcasting Authorization Granting</p> <p>To exclude the wording “natural entity” from art.28 point. (1) In. 28, 29 to establish the principle that „the re-transmission authorization” is issued to “service distributors” (that is for cable operators.) As an exception – re-transmission on the basis of interstate or international agreements, to be compulsorily consulted with the BC.</p> <p>Article 31 Technical License Granting</p> <p>(2) The broadcasting license holder shall ask for the technical license not later than within 6 months since obtaining the broadcasting license.</p>	<p>Constituting a radio or a TV station within 6 months, in the circumstances when on the local market there is no the necessary technical equipment, is impossible. The practice has proven it.</p> <p>the wording “natural entity” runs counter the term „broadcaster” of art.2</p> <p>Introducing the proposed principle is a protecting lever of the national information space, the radio frequencies cannot be used only for re-transmitting programs from abroad.</p>
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<p>validity term of the broadcasting license.</p> <p>Article 37. Exercise of Supervision and Control Activity</p> <p>(1) The Coordinating Council of the Audiovisual supervises the enforcement and observance of the provisions of the present Code.</p> <p>(2) While exercising supervision attributions, the Coordinating Council of the Audiovisual can request the necessary information from radio broadcasters or service providers, specifying the legal ground and the purpose of the request and can set the term within which this information should be provided.</p> <p>(3) The control activity is carried out as follows:</p> <ul style="list-style-type: none"> a) from the office; b) upon the request of a public authority; c) as a result of a claim submitted by an individual or legal entity directly affected by the violation of the legal provisions. <p>(4) The radio broadcasters must inform the Coordinating Council of the Audiovisual in written form about the beginning of broadcasting</p>	<p>(4) The technical license is valid 15 years.</p> <p>Article 37. Exercise of Supervision and Control Activity</p> <p>(1) Supervising the application, controlling the fulfillment of obligations and sanctioning the violations of the provisions of this Law rest with the BC, except for the cases when those competences rest with other authorities, in accordance with the legislation.</p> <p>(2) The BC examines the notifications regarding the encroachment upon this Law.</p> <p>(3) The BC is entitled to request the broadcasters the necessary information in applying this Law, specifying the legal ground and purpose of request.</p> <p>(4) The supervision and control are carried out by the BC either from its office or upon notification.</p>	<p>(4) In case of renouncing to /withdrawing the broadcasting license the equipment already certified can be used (rented to) by the new broadcasting license holder.</p> <p>The proposed wording establishes, clearer, regulations in such a specific area as controlling and sanctioning is, and is coordinated with the provisions from the existent normative acts.</p>
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<p>under Article 26, p. (3), at least 72 hours before broadcasting begins.</p> <p>(5) The Coordinating Council of the Audiovisual shall investigate the claims and requests submitted within 15 days from the date of the notification and the results of control and, eventually, the decision on the application of the sanction shall be published.</p> <p>Article 38. Sanctions</p> <p>(1) In case of violation of the legal norms by the radio broadcasters one of the following sanctions is applied:</p> <ul style="list-style-type: none"> - subpoena of becoming legal; - fine - broadcasting license revocation. <p>(2) In case of violation of the present Code, the radio broadcasters are sanctioned according to the legislation in force.</p> <p>(3) The sanctions stipulated in p. (1) are not</p>	<p>(5) Under the conditions of this Law, the control is exerted as follows:</p> <ul style="list-style-type: none"> a) upon the BC's initiative in agreement with the established and made public activity plan; b) upon the notification of legal and natural entities, public authorities, in case the BC decided, at its sitting, that those initiatives are grounded. <p>(6) The planned control of a broadcaster will be carried out by the BC but once a year.</p> <p>(7) The supervision and control will be carried out within reasonable terms and in a manner not affecting the broadcaster's editorial activity.</p> <p>Article 38. Offences</p> <p>In the sense of this Law, offences are considered:</p> <ul style="list-style-type: none"> a) broadcasting programs without having a broadcasting license or during the suspension of the broadcasting license; b) broadcasting programs by violating the specifications of the broadcasting license and its contents; c) the radical and unauthorized modification of the program offer on the ground of which the broadcaster obtained the broadcasting license; d) not observing the legal provisions regarding the re-broadcasting of other 	
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<p>applied successively, but depending on the gravity of the offence.</p> <p>(4) As for the committed violation the Coordinating Council of the Audiovisual can draw up a report on the administrative offence, take a decision on the administrative offence, apply an administrative sanction, or forward the materials to law enforcement bodies for the purpose of initiating a criminal case.</p> <p>(5) The broadcasting license is revoked under the conditions stipulated in p. 27.</p> <p>(6) Within the rehabilitation period stipulated in the subpoena, the Coordinating Council of the Audiovisual shall fully contribute to making the radio broadcaster in question legal.</p>	<p>broadcasters' program services;</p> <p>e) scheduling and airing programs which result in violating the Law's general principles, the guarantees regarding the freedom of speech, the access to audiovisual services, or if either bear a violent character, or represent "the hatred discourse;"</p> <p>f) not observing the legal provisions concerning granting the right to reply;</p> <p>g) using subliminal techniques in advertising and teleshopping;</p> <p>h) violating the legal regime regarding the contents and insertion of advertising and teleshopping, including the hidden advertising and teleshopping;</p> <p>i) the illegal usage of another broadcaster's signals, symbols or trademarks;</p> <p>j) working within the boundaries of certain reception of audiovisual programs that might disturb the reception of programs or worsen their technical quality, without co-ordinating with the respective broadcaster and with the special central body, in advance;</p> <p>k) re-broadcasting (re-distributing,) through cable or air, audiovisual programs received through individual or community equipment without having the legal authorizations;</p> <p>l) not observing the provisions regarding the legal regime of ownership in the broadcasting sector;</p> <p>m) repeatedly and groundlessly ignoring the</p>	
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	<p>broadcasters' legal obligations.</p> <p>n) not paying, in due time, the payments, taxes and fines applied under this Law.</p> <p>Article 38/1 Sanctions</p> <p>(1) In case the provisions of this Law are violated, the BC is entitled to gradually apply the following sanctions:</p> <ul style="list-style-type: none"> - warning; - fine; - suspending the broadcasting license; - reducing the validity term of the broadcasting license. <p>(2) For applying sanctions not envisaged by this Law, the BC shall resort to due authorities.</p> <p>(3) The BC shall decide upon applying any sanction, unless it has managed to friendly obtain the broadcaster's re-entry into legality.</p> <p>(4) The gravity of the sanctioned act, in the case of committing one of the offences provided in this Law, shall be established depending on its effects, as well as on the sanctions previously applied on broadcasters during the last year of activity.</p> <p>Article 38/2 Applying the sanctions</p> <p>(1) If the broadcaster or the service distributor encroaches upon the provisions of this Law or on the BC's normative decisions, the BC shall issue a warning on entering illegality. The warning is</p>	
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<p>Article 67. Establishment and Activity of Public Radio Broadcasters</p> <p>(1) Private radio broadcasters can be established by individuals or legal entities or groups of persons.</p> <p>(2) The legal capital of private radio broadcasters is constituted from the contributions of individuals and/or legal entities, residents or</p>	<p>made public through mass-media.</p> <p>(2) If the broadcaster or the service provider does not enter legality within the term and conditions established in the warning or again violates those provisions, a fine from 100 to 300 conventional units shall be applied.</p> <p>(3) If, after being fined, the broadcaster does not enter legality, the BC is entitled to gradually apply the other sanctions provided by this Law or, if it is the case, to annul the broadcasting license.</p> <p>(4) The BC's decision on applying the sanctions may be sued.</p> <p>(5) The BC's decision on applying the sanctions, not sued within the time limit provided by Law, is rightly considered as compulsory.</p> <p>Article 67. Establishment and Activity of Public Broadcasters.</p> <p>(1) The private broadcaster is a legal entity of private right, constituted in form of a commercial society, as provided by law, upon the initiative of one or more natural and/or legal entities, in conformity with the provisions of the legislation in force and the regulations established by the BC.</p> <p>(2) Founders of private broadcasters may not be state the authorities of any level, the institution of public right funded from the state budget, political parties and formations, trade unions and</p>	<p>The wording proposed for Article 67 determines the organizational form in which a private broadcaster may be constituted.</p> <p>One propose to establish the minimum level of the social capital of private broadcasters.</p>
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<p>non-residents of the Republic of Moldova, structures and enterprises of local public authorities.</p> <p>(3) Private investments in the legal capital of private radio broadcasters constitute at least 75%.</p> <p>(4) Private radio broadcasters carry out their activity according to the general concept of the program service, based on which the Council granted the broadcasting license and/or the re-broadcasting authorization.</p> <p>(5) Private radio broadcasters self-finance themselves from the revenues obtained from commercial activities, sponsorships and rendering of services.</p> <p>(6) Private radio broadcasters must inform the public about the name and premises of the administration, name of the programs or shows director, signals of the radio station, and the symbol of the TV station.</p> <p>(7) Private radio broadcasters holding broadcasting licenses annually present a report on the concept of the program service in the previous year of activity to the Council.</p>	<p>churches, enterprises and institutions specialized in telecommunications.</p> <p>(3) The broadcasting license holder is obligated to form a statutory capital, in amount and in the term determined by the BC's regulations, resorting from the type of the newly created station: radio or TV, the mode of broadcasting programs: air or cable, and from the coverage area: national, regional or local.</p> <p>(4) A natural or legal entity is entitled to hold the control share in the capital of a single private broadcaster, and not more than 10% in the capital of other private broadcasters.</p> <p>(5) A natural or legal entity may hold the control share in the capital of a single broadcaster which covers the same geographical area (national, regional or local.)</p> <p>(6) A natural or legal entity may not hold the control share in both the capitals of a radio station, and a television station.</p> <p>(7) A natural or legal entity which owns a news agency may not also own a broadcaster.</p> <p>(8) The private broadcasters work in conformity with the General Concept of the program service, approved of by the BC while issuing the broadcasting license. The later modifications and</p>	<p>Some principles regarding the control over capital concentration and observance of antimonopoly principles are established.</p>
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	<p>additions to the General Concept are to be approved of by the BC.</p> <p>(9) The private broadcasters present the BC an annual report on carrying out the provisions of the approved General Concept.</p> <p>(10) The provisions of this article also refer to the holder of re-transmission authorization.</p>	
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Final Aspects

The proposals and the recommendations of this report refer to key problems of the broadcasting sector and, find their echoes in the expertise of the European bodies. Rendered in the letter of law, they, most certainly, will contribute to genuinely reform the broadcasting sector. The imminence and opportunity of the reform logically pours from the social and political consensus regarding the issue of the strategic course of the Republic of Moldova towards the European integration. The general consensus for the European aspirations creates favorable premises for the process of responsible and compulsory adjustment of the national legal frame to European standards. This report underlines, once again, the will and availability of the civil society to cooperate with the supreme legislative forum in unfolding this process. At the same time, we express the regret that not all the possibilities have been used to cooperate in transparently drafting and publicly discussing the draft Broadcasting Code, so as to see it finalized into a legal act, which would display both the sufficiency of abilities in terms of legislative creation, as well as the country's sincere and firm will to get in line with the democratic societies. Otherwise there emerges a discrepancy between the declared intentions and the real offers. Europe can do much for Moldova. Europe can do nothing instead Moldova.

This report is submitted to the Information-Analytical and Prognosis Service of Parliament of the Republic of Moldova. Copies of the report are presented to the Parliamentary Media Committee and to the Parliamentary factions as proposals and suggestions for debates during the further readings of the drafts concerning the national broadcasting.

This report and other instruments of work on the subject are published on the official site of the Public Policies Institute and of the Soros-Moldova Foundation: www.ipp.md and www.soros.md.

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