DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

DGI(2018)05

Strasbourg, 30 May 2018

OPINION[1] OF THE DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW
INFORMATION SOCIETY AND ACTION AGAINST CRIME
INFORMATION SOCIETY DEPARTMENT

prepared on the basis of the expertise by Independent Council of Europe Experts Jean-François Furnémont and Eve Salomon

ON

Draft Code of Audiovisual Media Services of the Republic of Moldova

[1] This document has been produced by the Council of Europe Experts and reviewed by the Council of Europe Secretariat under the Joint Project between the Council of Europe and the European Union "Promoting media freedom and pluralism in the Republic of Moldova". The views expressed herein can in no way be taken to reflect the official opinion of either party.

Table of contents

1. EXECUTIVE SUMMARY

The draft Code represents a much-needed and significant improvement on current legislation and the authors strongly recommend its adoption by the Parliament of the Republic of Moldova subject to only relatively minor amendments.

Detailed observations on a number of articles are set out in Chapter 4 of this opinion. The main points of concern are the following:

- **Chapter 1 – General provisions**

Most of the definitions are inspired by (and in line with) the Audiovisual Media Services Directive and therefore require limited observations. The few comments provided are mainly meant to provide more clarity and legal certainty. Some of them might simply be related to translation issues.

- **Chapter 2 – Principles of audiovisual communication**

Certain clarifications are recommended in order to avoid any potential regulatory or other abuse which could interfere with freedom of expression.

It is recommended that a detailed portion of article 13 of the draft Code is removed and instead included within the Audiovisual Council's regulations.

Finally, provision should be made for a system of co-regulation to be adopted through the Audiovisual Council's regulations.

- **Chapter 3 – Linear audiovisual media services**

Certain clarifying measures are recommended.

It is suggested that the renewal of broadcast licences should not be limited to once only; as long as licence conditions are complied with, there should be no limit to the number of times a licence can be renewed. This would benefit not only the broadcasting companies themselves, but would be likely to improve the quality of programming for audiences.

It is suggested that where the Audiovisual Council determines that a broadcast licence holder holds a dominant position, a conciliation is instituted to agree remedies (including the possibility of behavioural, as well as structural remedies) to ensure the continued delivery of plurality of opinion to the public. Only if conciliation fails should the Audiovisual Council impose sanctions.

- **Chapter 4 – Public media service providers**

Public media service providers should have the explicit power to buy and sell programmes.

Consideration should be given to extending the programming remit.

- **Chapter 5 – National public media service providers**

A number of recommendations are made to improve the operational efficacy and governance of the national public media service providers and to ensure proper separation of powers of the Supervisory Board from the executive.

These include narrowing the scope for dismissal of the General Director, reducing the role of Parliament in the sale of property, suggestions about the terms, conditions for removal, and remuneration of members of the Supervisory Board and recommending greater transparency of the annual report.

- **Chapter 6 – Community radio broadcasting service providers**

The Code should clarify whether or not community radio can carry commercial advertising.

- **Chapter 7 – Media service distributors**

It is not usual for distribution platforms to require authorisation, but merely notification. However, where there are no international agreements in place to deal with unacceptable services being retransmitted from other countries, authorisation systems can provide an effective method for dealing with content which would not be permitted if produced domestically.

- **Chapter 8 – Non-Audiovisual Audiovisual Media Services**

Some minor clarifying amendments are recommended.

- **Chapter 9 – Audiovisual commercial communications**

A provision for co-regulation should be included, references to the prohibition of commercial communication for electronic cigarettes should be added, and the blanket exemption for political advertising needs to be reconsidered.

- **Chapter 10 – The Audiovisual Council**

Provisions should be included to allow for the regulation of video sharing platforms.

A number of recommendations are included about the capacity, incompatibilities, and removal of members of the Audiovisual Council.

The financial activity report of the Audiovisual Council should also be published on its website.

The sanctions process could be improved by allowing more time for defence and by enabling the publication of a determination of a breach of a licence condition or obligation to itself constitute a (minor) sanction.

- **Chapter 11 – Final and transitional provisions**

These are welcomed.

2. INTRODUCTION

At the request of the Media and Internet Division/Information Society Department of the Council of Europe, this expert opinion analyses whether the draft Code of Audiovisual Media Services of the Republic of Moldova (hereinafter "the draft Code") is in line with the Council of Europe standards regarding media freedom and pluralism and especially with the following texts:

- Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership;
- Recommendation CM/Rec(2016)4 of the Committee of Ministers to member states on the protection of journalism and safety of journalists and other media actors;
- Declaration of the Committee of Ministers on public service media governance (15 February 2012);
- Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance;
- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media;
- Recommendation 1897(2010) of the Parliamentary Assembly on respect for media freedom;
- Recommendation 1878(2009) of the Parliamentary Assembly on funding of public service broadcasting;
- Recommendation 1855(2009) of the Parliamentary Assembly on the regulation of audio-visual media services;
- Recommendation CM/Rec(2009)5 of the Committee of Ministers to member states on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment;
- Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue (11 February 2009);
- Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector (26 March 2008);
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns;
- Recommendation CM/Rec(2007)11 of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communications environment;
- Recommendation Rec(2007)3 of the Committee of Ministers on the remit of public service media in the information society;

- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content;
- Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration (31 January 2007);
- Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states (27 September 2006);
- Recommendation 1641(2004) of the Parliamentary Assembly on public service broadcasting;
- Declaration of the Committee of Ministers on freedom of political debate in the media (12 February 2004);
- Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector;
- Recommendation No. R(99)1 of the Committee of Ministers on measures to promote media pluralism;
- Recommendation No. R(96)10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting.

Considering the ambition of the authors of the draft to transpose the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive – hereinafter "the Directive"), this expert opinion also analyses whether the draft appears compliant with the Directive.

3. GENERAL COMMENTS ON THE DRAFT AND THE CONTEXT OF ITS ELABORATION

The draft Code comes after several failed attempts to review the regulatory framework for audiovisual media services, and more than ten years after the adoption of the Directive (adopted in 2007 and coordinated in 2010). The experts stress the utmost importance to complete the proposed reform in order to replace a now completely outdated audiovisual Code (the last ambitious reform adopted dates as far back as 2006, i.e. before the adoption of the Directive and even before the appearance of social networks and non-linear services) by a regulatory framework which will not only be in line with Council of Europe standards and the EU acquis, but will also create an appropriate legal and regulatory framework for the development of a flourishing and pluralistic audiovisual sector in the Republic of Moldova and for appropriate regulatory responses to the current threats on media pluralism and, beyond, on democracy itself.

The experts have been informed of (and sometimes contributed to) the numerous initiatives which have been taken by local experts involved in drafting the Code in order to ensure that the elaboration process remains inclusive from its inception to its delivery to Parliament. They can testify that these discussions represented an essential contribution to the overall quality of the draft and its overall comprehension, acceptance and endorsement by stakeholders and its connection with the expectations of civil society. In the same spirit, the quality, openness and engagement of the local expert team have to be highlighted.

Finally, the experts would like to draw the attention of the Parliament of the Republic of Moldova to the importance of the progress made by the draft in terms of mechanisms meant to facilitate the development of an audiovisual industry, to foster the governance of the public service broadcasters and to create the conditions for the development of a truly independent, impartial, accountable, transparent, open, efficient, expert and agile regulatory authority, which will really pursue the defence of the public interest. It is therefore essential to make sure that these provisions are not watered down during the legislative process: without the aforementioned legislative evolutions, the new regulatory framework will not be enforced and the problems currently identified in the audiovisual market in the Republic of Moldova will be likely to continue.

4. DETAILED OBSERVATIONS ON THE ARTICLES

4.1. Chapter 1 – General provisions

Most of the definitions are inspired by (and in line with) the Directive and therefore require limited observations. The few comments provided below are mainly meant to provide more clarity and legal certainty. Some of them might simply be related to translation issues.

The definition of *"event of major importance"* refers to events "*which may be of major interest to a significant part of the public."* For the sake of clarity, we suggest to replace the words *"may be"* by the words *"are considered to be"*. Considering the recital 52 of the Directive and in order to clarify the scope of the measure, we also suggest adding that these events *"are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to those events"*.

The definition of *"prime time"* is relatively extensive. In particular, we invite the lawmaker to consider if it is really proportionate, having in mind domestic viewing habits, to establish that the period between 06.00 and 24.00 on Saturdays, Sundays and holidays shall be considered as prime time.

The term *"local"* is used in two different ways: first in a geographical sense (to determine the difference between local, regional and national media service providers), and then in a national sense (to determine what is a Moldovan/domestic audiovisual programme). In this latter case, and in order to avoid confusion, we suggest using the terminology *"domestic audiovisual programme"* rather than *"local audiovisual programme"*.

The term *"local audiovisual program"* (in its national sense) is defined twice: once in article 1, and another time in article 4. We recommend providing a single definition and including all the definitions in article 1, while leaving article 4 for detailing the obligations in terms of broadcasting of such programmes.

The same remark is valid for:

- the term *"European audiovisual work"*: the definition should be provided only once in article 1, therefore enabling the two definitions to merge and leaving article 6 for detailing the obligations in terms of the broadcasting of such programmes.
- The term *"non-linear audiovisual media service"*: the definition should be provided only once in article 1, therefore allowing the two definitions to merge and removing article 57 (1).

4.2. Chapter 2 – Principles of audiovisual communication

Article 7 (2) refers to the public's right to freedom of expression. We suggest adding a clarification: *"which includes the right to receive information."*

Article 7 (6) prohibits the transmission or retransmission of services *"which have the effect of restricting freedom of expression."* We recommend removing this provision as it is

unclear and open to abuse. Elsewhere the draft Code sets out content requirements and restrictions for services and it is unnecessary and unhelpful to have such a vague provision, which lacks legal clarity.

Article 9 (2) provides protection of journalists' sources. "Journalists" are not defined, but we recommend that the term is interpreted broadly to include self-declared 'citizen journalists' as well as those working for more formal news organisations.

Article 10 (3) The Code should make clear that any breach of the rules on protections of journalists should be subject to punishment according to the *criminal* law (as per Council of Europe's Recommendation CM/Rec(2016)4 on protection of journalism and safety of journalists and other media actors).

Article 10 (4) seems to suggest that the Audiovisual Council will determine whether or not any alleged cases of threats, pressures or intimidations by journalists should be referred to the relevant authorities. This may be *in addition to*, but not *instead of* direct access by journalists to law enforcement authorities. It is important that the Audiovisual Council does not set itself up as a mediator to determine whether or not an alleged act is criminal or not.

Article 11 2 (c) prohibits content which presents apologetically *"communist regimes."* As Communism serves as a form of government in several countries, and indeed there is an active communist party in Moldova, prohibiting programming which is supportive of communism would be a breach of freedom of expression. We therefore recommend amending this article to remove the reference to *"communist regimes"* to clearly place the provision within acceptable limits to protect human dignity.

Article 13 is titled *"Ensuring correct information."* This may be an issue of translation, but *"correctness"* is a concept that can be severely abused; history has shown that what is considered *"correct"* one day, is proven wrong the next. We would recommend changing the emphasis of this article to *"fairness and accuracy"*, and removing references throughout the article to *"correct"* and *"correctness"* (replacing them with *"accurate"* and *"accuracy"*).

Furthermore, the article contains far too many detailed operational rules for a Law. Article 13 (15) requires the Audiovisual Council to establish Audiovisual Content Regulation and most of the provisions in article 13 should be left to such a Regulation. We recommend that article 13 is to only paragraphs (1), (2), (12), (13), (14) and (15). Paragraphs (3) to (11) are detailed provisions which expand on (1) and (2) and should be moved to the Regulation of the Audiovisual Council.

Article 14 (1) extends the right of reply to all rights; this is too wide. The Directive states that the right extends to those *"whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts."* The right of reply therefore refers to the opportunity to correct inaccuracies. We suggest the wording from the Directive is adopted.

Article 15 (11) (g) refers to the promotion of co-regulation for minors. There is no other reference to co-regulation in the draft Code. The sub-section also refers to the promotion, *"on the basis of recommendations, creation and updating of catalogues for minors and catalogues with prior individual authorization."* It is not clear what this is, but in any event

there is no follow-up elsewhere in the Code. It would be ideal if basic provisions about creating a co-regulatory framework were included in the Code, or at least the power was given to the Audiovisual Council to set Regulations on this topic.

Article 16 (3) (b) refers to *"programmes of major importance."* Are these the same as those in article 20? If not, the term should either be clarified, or made subject to interpretation in the relevant Audiovisual Council Regulation.

Article 20 (2) should make it clear that events of major importance must be broadcast free to air, as required by the Directive.

4.3. Chapter 3 – Linear audiovisual media services

Under the current Code, broadcast licences are granted for 6 or 7 years, depending on the type of service. We welcome the proposal to align the duration of each broadcast licence for all services as well as the extension of the duration of the broadcast licence to 9 years. Broadcasting activities require a high level of initial investment and therefore a broadcast licence can be made profitable only after a long period of time. It also potentially beneficial for the public: a service provider whose economic activity is secured for a longer period of time will potentially provide programme of a growing quality and diversity.

Article 26 refers to an extension of the broadcast licence *"by law."* This can be misleading since the extension is not delivered by the Parliament but by the Audiovisual Council. We therefore suggest to delete the words *"by law"* in the title and in the text of the article.

In the same article, for the sake of clarity, we also suggest to replace the word *"extension"* by the word *"renewal"*: the procedure consists indeed of a renewal for another period of 9 years rather than an extension (which would rather refer to an extension for a limited period of time).

Article 26 also states that the extension may happen only once. In the same spirit as our previous observation, we do not see any reason why a renewal should happen only once. It is hard to imagine why, after 18 years on the market, a service provider could not have its broadcast licence renewed as long as the licence conditions have been respected. As long as the renewal is conditional on satisfactory compliance with licence conditions – which is the case under article 26 (2) c) – the possibilities for renewal should be potentially unlimited.

Article 27 mentions that broadcast licences are delivered by the Audiovisual Council in return for a fee, but the draft Code does not mention anywhere which authority is determining the amount of this fee and by of which criteria the fee is calculated. This point should be clarified, for example by a provision which would give the power to the Audiovisual Council to determine the amount of the fee in a regulation, following certain criteria.

Article 28 (10) appears contradictory with article 25 (5). Since there is an obligation for the service provider to obtain the prior consent of the Audiovisual Council in the case of a change in its ownership structure, this means that the service provider has indeed delivered all the necessary information to the Council about the intention of a natural or legal person

to acquire some of its shares. Therefore, imposing the obligation of delivery of the information after the acquisition has been carried out does not appear necessary. In any case, the subjects of media regulation being the media service providers, the obligation to deliver the information (be it before or after the change in the ownership structure) should be on the media service providers and not the natural or legal persons who hold part of the shares in these services.

Article 29 contains measures which are meant to avoid a dominant position in the formation of public opinion and gives the power, in the case of determination of such a dominant position, to the Audiovisual Council to *"requests legalization of the broadcast license holder."* Such a formulation can be misleading since, as such, reaching a dominant position is not illegal. What matters is the consequence of such a dominant position, which is its potential influence on the freedom of the public to have access to a plurality of opinion, and consequently the efficiency of the remedies imposed. Also, article 29 does not detail any of the measures which could be taken by the Audiovisual Council in order to reach the *"legalisation."* We therefore suggest replacing the second sentence of article 29 (7) by the following: "*in the case of determination of the dominant position in formation of public opinion, the Audiovisual Council engages with the broadcast licence holder in a conciliation in order to agree on measures meant to remedy to this situation and ensure plurality of opinion. If this conciliation does not lead to the conclusion of a mutual agreement within a period of six months or if this agreement is not implemented within a reasonable period, the Audiovisual Council can impose sanctions in accordance with this Code with a view to safeguard plurality of opinion."*

Chapters 6 (community radios) and 8 (non-linear audiovisual media services) mention a register of these services, respectively in articles 50 (6) and 60 (4); a register of linear audiovisual media services should also be made publicity available by the Audiovisual Council. Also, these chapters oblige the provider to notify the Audiovisual Council of the termination of their activity; this obligation should also be applied to linear audiovisual media services.

4.4. Chapter 4 – Public media service providers

Article 33 (1) (e) should include for the purchase of programmes.

Article 33 (1) (j) should include the sale of programmes.

Article 35 sets out the duties of the public service media service providers, but has a relatively narrow set of programming objectives compared to those of other countries. In particular, there is no requirement to contribute to learning by providing educational or children's programming, or to contribute to religious understanding. It may be desirable to consider including these.

4.5. Chapter 5 – National public media service providers

It may be advisable to qualify article 37 (10) (b) to refer to loss of support *"because of a severe and sustained failure to deliver the Terms of Reference."*

Article 37 (10) (c) provides what seems to be a broad scope for the dismissal of the General Director. The Code should clarify that the General Director can be dismissed for breaching the incompatibilities set out in article 37 (9), and if there are other obligations set out in other laws, then these conditions (or the legal references) should be set out clearly here.

Article 40 (3) requires the consent of Parliament for the purchase or sale of immovable property. This seems unwieldy and unworkable. Perhaps a value limit could be included so that consent is only required for major sales/purchases.

Article 41 (3) should include revenues from the sale of programmes or royalties from joint productions.

Article 43 (6) (e) and (7). In order to avoid the possibility of a rolling set of members who do one term, have 6 years off and then another term, it might be better to allow for shorter terms of 4 years, renewable once only with a maximum of 8 years permissible.

Article 45 (1) (i) gives the Supervisory Board too much operational power, permitting it to interfere with editorial activity which is the responsibility of the General Director and Management Committee. It should not have any right to intervene, and the words, *"and, if necessary, to intervene with binding decisions"* should be removed.

Article 46 (8) lists the conditions when a position may become vacant on the Supervisory Board. Many countries also include bankruptcy as a reason to dismiss a member. This may be added.

Article 47 (2) sets the remuneration of members of the Supervisory Board on the basis of the number of meetings they attend – at 10% of the remuneration of the Chair. The draft Code also provides that there are to be at least one meeting a month. This means that if members attend every meeting, they will earn at least 120% of the Chair's remuneration. Is it intended that Members potentially earn more than the Chair? If not, another formula needs to be determined.

Article 48. To ensure maximum transparency, the annual activity report should be published on the website of national public media service provider.

4.6. Chapter 6 – Community radio broadcasting service providers

We welcome the initiative to include in the draft Code see comprehensive legal provision being made for Community radio.

Article 51(1) (d) refers to *"other legal revenues."* By virtue of article 63 (1), advertising is permitted. Is this the intention? In many countries community radio services are not permitted to carry commercial advertising, or are severely limited in the amount they can carry. Without an explicit reference to advertising, the assumption here is that community

radio will be able to carry the full range and amount of commercial communications as other audiovisual media services.

4.7. Chapter 7 – Media service distributors

It is not usual for distribution platforms to require authorisation, but merely notification. However, where there are no international agreements in place to deal with unacceptable services being retransmitted from other countries, authorisation systems can provide an effective method for dealing with content which would not be permitted if produced domestically.

4.8. Chapter 8 – Non-linear audiovisual media services

For the sake of clarity, article 59 (4) and (5) could be merged and article 59 (5) should be rewritten in order to remove the reference to *"the data specified in para. (3)"* since this data does not exist.

Article 61 lists the obligations imposed on non-linear audiovisual media services. The obligations laid down in article 11 of the draft Code (respect of fundamental rights) should be added to this article.

4.9. Chapter 9 – Audiovisual commercial communications

In accordance with both the current version of the Directive, and with the likely amendments, the Code should include a provision for co-regulation in order to foster self-regulatory codes of conduct. This is particularly so with regard to alcohol advertising and advertising in children's programmes, of foods and beverages containing nutrients, and substances with a nutritional or physiological effect, in particular fat, saturated fats, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended (also see comments in Chapter 2 above about co-regulation).

Article 63 (1) gives media service providers entitlement to carry advertising. In theory this would apply to community radio services (see comments on Chapter 6 above).

Article 66 (3) should also prohibit sponsorship by manufacturers of electronic cigarettes.

Article 68 (2) (f) removes electoral advertising from the computation of advertising minutage. This cannot be the case if electoral advertising is *paid* advertising as it would then be commercial communication. We therefore recommend that it is made clear that the exemption only applies to *"electoral advertising broadcast free of charge."*

Article 70 (5) (a) should also prohibit product placement by manufacturers of electronic cigarettes.

4.10. Chapter 10 – The Audiovisual Council

In line with our previous observation regarding article 29, we suggest adding in article 73 (duties of the Audiovisual Council) a duty in terms of remedy to dominant positions. This could be done by adding, in article 73 (3) (i), after "*methodologies for monitoring of audiovisual pluralism"*, the terms *"and regulations on remedies to a dominant position in formation of public opinion."*

Article 76 (3) (b) gives the duty to the Audiovisual Council to develop and implement *"regulations on the contents of linear and non-linear audiovisual media services, as well as video-sharing platform services."* It might be appropriate to add that these regulations should reflect the provisions of the Directive, and therefore should be updated accordingly when need be.

Article 77 (5) lists all the requirements which have to be fulfilled by the candidates for a position within the Audiovisual Council. Requirement (g) states that *"they have an impeccable public reputation."* Although we fully support the objectives of such a requirement, it is worth noting that this is a highly subjective criterion and that, in these days of fake news and disinformation, the public reputation of a person can sometimes be damaged due to the propagation of false or biased information. One solution to such issue might be to mention the reputation in article 77 (1) alongside the incorruptibility in order to make it an element of appreciation of the nomination but not an element which is in the list of all the mandatory requirements. Alternatively, reputation could be confirmed through the submission of at least three letters of recommendation as is required for applicants to the Supervisory Board as per article 43(6) (d).

Article 78 (1) mentions that the members of the Audiovisual Council shall be *"free from the inappropriate influence of any other public body."* This obligation should be extended to influence of any natural or legal person or group of interest.

Article 79 lists the incompatibilities with the position of member of the Audiovisual Council. Under paragraph (4) should be added a reference to holding positions, shares or stakes of a legal person that has not only a broadcast license or a retransmission license, but also a notice of provision of a non-linear audiovisual media service.

Article 80 (6) opens the possibility of the President and the Vice-President being dismissed on the proposal of three members of the Audiovisual Council by secret ballot of at least 6 members of the Council. It is not clear if this provision applies to the quality of President or Vice-President or to the status of member of the Audiovisual Council as a whole. Since article 78 (2) forbids the dismissal of members of the Audiovisual Council, we assume that this provision refers only to the first option; in this case, we do not see the purpose of such a provision, which risks to create permanent ambitions and leadership crises within the Council.

Article 82 (2) states that the annual financial activity report of the Audiovisual Council is published in the Official Gazette of the Republic of Moldova. In order to ensure full transparency on this matter, we suggest that it is also published on the website of the Audiovisual Council.

Article 84 details the procedure which has to be followed by the Audiovisual Council in case of a breach of the Code. The experts support the ambition of having such a procedure conducted with due diligence. Yet, this cannot be done at the expenses of the right of defence. In this regard, a period of only 5 days between the exercise of control of the factual circumstances and the hearing of the party concerned does not appear proportionate and should be extended according to the general standards used for administrative procedures in the Republic of Moldova.

Article 85 provides for a broad range of sanctions, which is essential in order to allow the Audiovisual Council to respect the principle of proportionality and follow a gradual approach. Yet, the principle of proportionality could be better safeguarded by avoiding the systematic application of the communication of the sanction by the person which has been sanctioned (paragraph 11). The broadcast of (the reasons of) a decision should rather be a sanction as such rather than only an additional measure complementing a sanction. Actually, it is one of the most feared sanctions by the broadcasters.

4.11. Chapter 11 – Final and transitional provisions

The new obligations imposed by article 90 (1) in terms of quotas of European works (50% for linear services and 30% for non-linear services) might be easily attained by some service providers but not by others. In order not to disrupt the business model of some service providers, a transition period is therefore essential. The three year gradual transition period is therefore welcome, as well as the flexibility given to the Audiovisual Council to adapt the conditions of such a transition during these three years, for example via a specific regulation on the matter.

In the same vein, the five year gradual transition period for quotas of works of independent producers mentioned under article 90 (2) is also welcome.