LEGAL ANALYSIS:
ASSESSMENT OF MOLDOVAN AUDIOVISUAL LEGISLATION IN RELATION TO THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE, EUROPEAN MEDIA FREEDOM ACT, DIGITAL SERVICES ACT, AND OTHER RELEVANT INTERNATIONAL STANDARDS

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# 1 Introduction

The purpose of this report is to provide a Gap Analysis of the Moldovan Audiovisual Legislation in relation to the Audiovisual Media Services Directive, European Media Freedom Act, Digital Services Act, and other Relevant International Standards, ensuring consistency with European norms and legal frameworks.

The main focus of the analysis is the Audiovisual Media Services Code, which is analysed in detail. However, it was also considered necessary to review the Audiovisual Content Regulation, as amended in 2024, as the purpose of this regulation is to implement the Audiovisual Media Services Code. It was necessary to clarify whether any gaps that are identified in the Audiovisual Code may have been addressed in the Regulation.

Given the remit to also assess the alignment of the legislative framework with the European Media Freedom Act and the Digital Services Act (DSA), other legislative acts are referred to here. In particular, the European Media Freedom Act (EMFA) impacts on several areas of the legislative framework including the Law on Freedom of Expression. However, the remit of this exercise did not involve a complete assessment of the Law on Freedom of Expression and therefore reference is made only to the elements impacted by the EMFA. The EMFA also addresses public service broadcasting, state advertising and audience measurement.

In addition, the Digital Services Act is intended to (among others) update the E-Commerce Directive. Hence, the Digital Services Act has implications for the current E-Commerce Law in Moldova, which was also not the focus of a detailed analysis in this report. To the extent that the Digital Services Act overlaps with the Audiovisual Media Services Code, particularly with regard to video-sharing platform services (VSPS) and has implications for the legislative framework for the media, some recommendations regarding the DSA are outlined.

As some elements of the AVMS Directive are dealt with via the Law on Advertising, this Law was also briefly checked for alignment with the Directive where relevant definitions and provisions were not found in the Audiovisual Media Services Code. The Law on Advertising regulates political advertising and it would be useful to review these provisions in relation to the ‘Regulation on the Transparency and Targeting of Political Advertising’ adopted by the EU in February 2024.

The approach of this report is not to outline in detail all the relevant standards at the outset, but rather to link them directly to the chapters dealing with specific themes. With regard to European standards extensive reference is made to Council of Europe standards as well as the relevant European Union acquis.
2 Purpose and Scope of the Code, and definitions


2.1 Purpose and scope

It is important that it is reflected here that the Code transposes Directive 2010/13/EU as amended by Directive (EU) 2018/1808. The Code also does far more than implement the AVMS Directive. Amongst others, it: regulates public service broadcasting in Moldova and community media; regulates the licensing of services and distribution of services including over digital terrestrial television; partly regulates distributors of audiovisual media services; regulates media ownership; and contains certain provisions on the protection of journalists. This is reflected under Article 2.

2.2 Definitions

Definitions, or ‘main concepts’ are outlined under Article 1. This article is slightly confusing as the concepts are not ordered thematically. This makes navigation difficult for the reader and renders it difficult to find a specific concept. For example, given the purpose of the Law, it would be better if key terms such as ‘audiovisual media service’ were explained at the top of the list (currently positioned 44 in the list of terms). There are several definitions in the Audiovisual Code which are not yet in line with the Audiovisual Media Services Directive. The definition of ‘audiovisual media service’ lacks the clarification that an audiovisual media service can be a television broadcast or an on-demand audiovisual media service, or an audiovisual commercial communication.

Some of the non-aligned definitions relate to advertising and audiovisual commercial communications. The definition of audiovisual commercial communication (ACC) uses the expression ‘audiovisual programme’ whose definition links it to broadcasting. The definition of ACC therefore lacks reference to user-generated content which is of key importance in relation to the regulation of advertising appearing in video-sharing platform services. The same applies to definitions for ‘product placement’ and ‘sponsorship’. An additional check was made of the Law on Advertising (amended in 2023 and 2024), but this also does not include such definitions.6

No definition of ‘editorial decision’ is provided in the Audiovisual Media Services Code. Also, the term ‘audiovisual communication’ - making available to the public various audiovisual programmes using terrestrial frequencies and various technical means (transmitters, satellites, cable, etc.) could lead to confusion (given the similarity with audiovisual commercial communication). This should rather be termed ‘audiovisual media service distribution’.

There is a problem regarding the definition of a ‘video-sharing platform service’ (VSPS) as it refers to a VSPS as an ‘audiovisual media service’. In fact, the entire approach to dealing with video-sharing platforms is problematic and not in line with EU acquis or with European standards and practice, as the legislation aims to treat video-sharing platforms in the same way as audiovisual media. This is discussed in more detail below. Firstly, video-sharing platform services are not audiovisual media services, which are clearly defined in the Directive as being a television broadcast or an on-demand audiovisual media service, or an audiovisual commercial communication. This definition has implications for the reading of the rest of the Code including with regard to the approach (or lack of) to regulation of VSPS, which is discussed in detail below under chapter six.

There are two other definitions which are discussed more in detail in relation to prohibited content under 3.3 below: the definitions of disinformation and of hate speech.

Key findings and recommendations

Update key definitions such as ‘audiovisual media service’ and ‘audiovisual commercial communications’ to align with the Directive. Ideally this should be done in both the Audiovisual Media Code and the Law on Advertising, and the Audiovisual Content Regulation.

Organise the definitions (concepts) in thematic order for clarity and ease of access.

Update definitions relevant to audiovisual commercial communications (ACCs) to align with the directive, by making reference also to ACCs linked to user-generated content.

Introduce a definition of ‘editorial decision’: a decision which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the audiovisual media service.

Align the definition of ‘video-sharing platform service’ (VSPS) with the Directive to remove the description of a VSPS as an audiovisual media service.
3 Jurisdiction, freedom of reception / retransmission and derogations

3.1 Jurisdiction of audiovisual media services

Article 2 of the Code outlines the purpose, object and scope of the law and deals with the issue of jurisdiction of audiovisual media services. Paragraph 5 closely aligns with the Directive. Paragraph 6 introduces the secondary criteria for establishing jurisdiction, some of which are not standard. These include a service that uses a frequency or a slot granted by the competent public authority. It is assumed that this implies that broadcast frequencies can be granted to foreign TV channels not licensed in the country. This appears to be the case regarding Digital Terrestrial Television as Article 25 (4) allows for capacity on the DTT to be used by foreign media service providers. Hence these services would require some type of DTT licensing agreement with the regulator, which could include an agreement to abide by national rules. This would not be the equivalent of establishing jurisdiction. For example, Euronews may take a spot on the national DTT service and sign an agreement with the regulator and agree to respect the rules of the Moldovan regulator. But Euronews would remain under French jurisdiction unless it opened a service based in Moldova.

Another element of secondary criteria for establishing jurisdiction which is not usual is the inclusion of e) uses an Internet connection located on the territory of the Republic of Moldova.

It is not clear whether this refers to services which are broadcasting online only, or is an attempt to include video-sharing platform services within the criteria for establishing jurisdiction of audiovisual media services. It should be noted that the AVMS Directive provides for a separate set of criteria for establishing the jurisdiction of video-sharing platform services (Article 28a (par. 1-5)), which is absent in the Code (see further under chapter six below). Again, this may relate to the non-aligned definition of VSPS (see above under 2.2).

There is no requirement included here that the AVMS providers inform should inform the Audiovisual Council about any changes that may affect the determination of jurisdiction.

3.2 Freedom of reception and retransmission and derogations

Regarding the principle of freedom of reception and retransmission for audiovisual media services, this is not incorporated in the legal framework in Moldova (Article 3 AVMS Directive, Article 4 European Convention on Transfrontier Television). The principle is there, but in a negative sense:

(4) *In order to protect the national audiovisual space and ensure information security:*

(a) media service providers shall not broadcast, and media service distributors shall not retransmit, audiovisual television and radio programmes with news, information, analytical, military and political content which have been produced in States other than Member States of the European Union, the United States of America, Canada and States which have ratified the European Convention on Transfrontier Television, with the exception of films and entertainment programmes which do not have military content;

It is recommended to follow the practice of other European countries (EU Members and candidates) and establish the principle of freedom of reception and transmission in line with the AVMS Directive:

‘Article 3 (1). Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive’

The Code can then outline in detail the system for derogation from this principle. Derogations are allowed where a service manifestly seriously and gravely infringes:

- point (a) of Article 6(1) - 1. Without prejudice to the obligation of Member States to respect and protect human dignity, Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any: a) incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter

- or Article 6a(1) - Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme. The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

- or prejudices or presents a serious and grave risk of prejudice to public health.

Derogations are also allowed where a service manifestly, seriously and gravely infringes:

- point (b) of Article 6(1) - public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541.
3.3 Prohibited content

A key element of national audiovisual media frameworks concerns the prohibition of certain content. A first observation of this analysis regarding attempts to prohibit propaganda and disinformation which threatens the security of the state, is that this has led to a filtering down of these approaches to a broader concept of disinformation and reaching into the regulation of what is termed ‘accurate information’ including in news (see section 3.5 below). In the case of the latter the work of the Audiovisual Council could be seen to be encroaching on systems of self-regulation. The Audiovisual Code should distinguish more clearly the differences between these issues. This mixing of ideas and the equal treatment of these different types of content is also clear in the nature of sanctions and fines applied (see section 3.6 below). Hence, the overall approach is a threat to freedom of expression as self-regulation is undermined and the concept of ‘accurate information’ is vague and general.

Several articles in the Code address the issue of prohibited content. Article 11 addresses ‘Respect for fundamental rights and freedoms.’ Regarding prohibited content, the Article is framed differently to that commonly used in audiovisual media legislation. The practice is to prohibit certain content, and then to outline the procedure for dealing with audiovisual media services that violate these prohibitions. In the Moldovan Audiovisual Code, this provision prohibits audiovisual programmes that are ‘likely to propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination based on sex, race, nationality, religion, disability or sexual orientation.’

At the same time Article 17 (Protection of national audiovisual space) states:

(3) The broadcasting of audiovisual programmes that constitute hate speech, disinformation, propaganda of military aggression, extremist content, content of a terrorist nature or content that poses a threat to national security is prohibited in the national audiovisual area.

However, the inclusion of the vague term ‘disinformation’ in this provision is problematic. The definition of disinformation in the Code is not considered by experts to be in line with European standards. It has been noted however that a new definition came into force in September 2023. Hence as can be seen below it is closer to the description provided by the European Commission. In the table below, the second row of the EU description provides an important qualifier of what ‘disinformation’ is not – such as reporting errors, satire and parody, or clearly identified partisan news or commentary. It is highly recommended that the definition in the Audiovisual Code also include a list of the types of content that are not ‘disinformation’.

... or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.

The latter condition has mainly been tested in relation to case law emanating from the Baltic States. The European Union Council Regulation of March 2022 that introduced ‘restrictive measures in view of Russia’s actions destabilizing the situation in Ukraine’ focused on the concept of services that prejudice or present a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence. In the Regulation, reference was made to the ‘massive propaganda and disinformation’ of the Russian media outlets in relation to ‘this outrageous attack on a free and independent country.’

The Venice Commission has noted that the Moldovan legislation has combined different approaches to the issue of dealing with problematic content:

‘emphases is placed, on the one hand, on preventing the broadcasting of programmes with a certain content, namely those spreading disinformation, extremist ideas or justifying international crimes; and, on the other hand, on limiting the broadcasting of programmes of a certain origin, namely those coming from outside the EU and some more countries (effectively, that means those coming from the Russian Federation). While the content-based approach is legitimate, the origin-based approach consisting of a general referral to states that have ratified the European Convention on Transfrontier Television and to some other states seems more problematic. The proportionality of the different measures therefore needs to be examined more in detail.’

Given the specific circumstances in the Republic of Moldova in the context of the current Russian war of aggression in Ukraine, key international expert Andrei Richter has analysed the current approach in the legislative framework in the Republic of Moldova with regard to effective protection from propaganda, manipulation and disinformation. Given the extensive examination of international standards, definitions, and approaches related to war propaganda, propaganda and disinformation examined in the report, it is not considered necessary to provide such a significant review here. Instead, some comments will be made with reference to the Code and supplemented by the recommendations of Richter’s report. Rather than attempting here to propose specific changes in specific articles, it is strongly advised that recommendations of Richter’s report be studied and assessed by relevant stakeholders in order to amend the legislative framework and maximise the protection of citizens.
Disinformation is verifiably false or misleading information that, cumulatively, is created, presented and disseminated for economic gain or to intentionally deceive the public and that may cause public harm. The intentional dissemination, by any means, in the public space, of information whose false or misleading nature can be verified, and which is likely to harm national security.

Public harm includes threats to democratic processes as well as to public goods such as Union citizens’ health, environment or security. Disinformation does not include misleading advertising, reporting errors, satire and parody, or clearly identified partisan news and commentary.

It would be useful if there were one consolidated article that precisely outlined what prohibited content (which is illegal and/or criminal) constitutes. As an example, a summary of such content is outlined below (paraphrasing the relevant article in the recently adopted Law on Audio and Audiovisual Media Services in North Macedonia):

1. Audio and audiovisual media services must not contain programs or contents that endanger national security, incite violent overthrow of the constitutional order of the State, call for military aggression or an armed conflict, or content, the dissemination of which, constitutes an illegal activity, including public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia.

2. Audio and audiovisual media services must not contain content that incites hatred or violence or spread discrimination, intolerance, hatred or violence, based on race, colour of skin, origin, national or ethnic origin, sex, gender, sexual orientation, gender identity, membership of a marginalized group, language, nationality, social origin, education, religion or religious belief, political belief, other belief, disability, age, family or marital status, material status, health condition, personal trait, and social status or any other grounds.

3. The special prohibitions referred to in paragraph (1 and 2) of this Article shall be in accordance with the practice of the European Court of Human Rights.

The Richter study provided significant detail regarding the various tools and legal bases available to the Republic of Moldova to protect its citizens from manipulation particularly during times of crisis and/or threats to the integrity of the State. These have a much broader reach than audiovisual media regulation. This study should serve as a source for a road map for fighting disinformation for the Government authorities. The study recommended that (among others):

- Moldova is recommended to review and amend the legal definitions of the national law that relates to disinformation and propaganda in the media, such as ‘media’, ‘journalist/journalism’, ‘disinformation’, ‘misinformation’, ‘propaganda’, ‘propaganda for war’, ‘national security’, ‘hate speech’, ‘public harm’, ‘national interest’, ‘information war’, in line with the international law, the standards of the EU and recommendations of the Council of Europe, including the Venice Commission.

- Intergovernmental human rights expert bodies point to the possibility of restricting propaganda of the aggressor state, or aggressive propaganda and disinformation and the report notes that this as type of restriction that better fits the human right framework, rather than the current criteria based on the origin of AV programmes in a country that has not acceded to the ECTT or is not a member state of the EU.

- Self-regulatory bodies such as Press Commission or Ombudsman should be strengthened and supported.

Regarding the definition of ‘hate speech’ in the Code, it would be useful to review this in light of the 2022 Council of Europe Recommendation on combating hate speech.11

The Recommendation states that: “hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.”

An important approach to dealing with this is the development of a Guidance on hate speech for media service providers in collaboration with legal experts. It is notable that the regulatory authority in Moldova has developed a methodology for monitoring hate speech in May 2023.12

The 2022 CoE Recommendation emphasises a principle of differentiation between:

a. i. hate speech that is prohibited under criminal law; and
   ii. hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and

b. offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights, but nevertheless call for alternative responses, as set out below, such as: counter-speech and other countermeasures; measures fostering intercultural dialogue and understanding, including via the media and social media; and relevant educational, information-sharing and awareness-raising activities.

This type of differentiation emphasises the need for a nuanced approach and a case-by-case approach to assessing instances of hate speech. This case-by-case approach is part of the regulator’s methodology.
3.4 Regulation of ‘accurate information’ and impact on self-regulation

Article 21, which deals with transparency of ownership of media service providers requires that the Impressum includes: f) the editorial policy and the person/persons (body/bodies) who determine the editorial policy and are responsible for it;

It would be unusual to require a media service to provide information on its ‘editorial policy’ as this could directly encroach on the editorial freedom. It is reasonable to provide a contact detail for the persons/ bodies with editorial responsibility. In addition, media outlets could be asked to make public the internal documents related to ethics such as journalism ethics or editorial code13 or self-regulatory documents elaborated by the self-regulatory body to which they adhere. Hence this Article should be adjusted to reflect these elements and not require a statement of editorial policy.

Article 13 also has very detailed and prescriptive requirements regarding ‘Ensuring accurate information,’ which also appear to encroach on the realm of self-regulation. However, some of the detail under this article could be considered as guidance with regard to fairness and accuracy in news or could be relevant to guidance on coverage of elections, both of which would be more appropriate in secondary acts or guidance of the regulator.14

In addition, Article 13 (15) states that ‘The Audiovisual Council shall lay down detailed provisions in the Regulation on audiovisual content to ensure that the public is correctly informed.’ This provision can potentially encroach upon the sphere of self-regulation, as the regulator will be in a position to judge the media outlets’ compliance with professional and ethical reporting standards.

For example, Article 13 (1) requires media outlets to: a) ensure a clear distinction between facts and opinions; b) to report a correct fact or event and to verify and present the information impartially and in good faith.

Certainly, any concerns in this area can be addressed via complaints to the media service and/or to the regulator and/or to the self-regulatory bodies, and also via a ‘right to reply.’ It is common in audiovisual media laws to include a ‘set of principles’ that should guide the work of the media where ideas such as those outlined above are included. Such principles can be broader and, as in this case, also distinct from the strict regulation of content and hence are not within the remit of the regulator to monitor and sanction.

The Code allows for potential sanctions and suspensions in this area. Under Article 84, the regulator can impose sanctions and Article 13 is included (see Article 84 (3)). Under Article 84 (104): Suspension of the right to broadcast audiovisual commercial communications for a maximum period of 7 days may be imposed as an additional sanction for infringement of the provisions of art. 4 para. (3) – (9) and of art. 13 para. (1) let. b) and para. (4) and (6).

Hence, if a media outlet does not adhere to the following provisions under Article 13, it may face suspension of the right to broadcast ACCS:

- ‘(1b) to report a correct fact or event and to verify and present the information impartially and in good faith.
- (4) In audiovisual news programmes, for which accuracy and fairness are essential, reports must come from reliable sources, sufficiently documented from a factual point of view, with a credible and impartial approach to events, with a balanced reflection of different opinions.
- (6) The following requirements must be respected in audiovisual news and debate programmes providing information on matters of public interest of a political, economic, social or cultural nature: a) ensure impartiality, balance and favour the free formation of opinions, by presenting the main opposing points of view, during the period when the issues are under public debate; b) avoid any form of discrimination.’

3.5 Related fines and sanctions

The levels of fines in the Code do not seem to be particularly high. For example, failure to comply with decisions of the Audiovisual Council on the protection of minors will be met with fines of between 10000 Lei to 15000 Lei approximately (520 to 780 Euro). Repeated offences can lead to fines of between 15000 Lei to 20000 Lei approximately (780 to 1000 Euro).

Fines for the dissemination of content under Article 11 (2): (a) likely to propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination based on sex, race, nationality, religion, disability or sexual orientation; b) disseminating child pornography’ vary from 40,000 Lei to 70,000 Lei approximately (2000 to 3600 Euro). For repeated violation of these provisions, the fine shall be from 70000 Lei to 100000 Lei (3600 Euro to 5200). A withdrawal of the broadcasting licence shall be applied after the sanctions provided for in this paragraph have been gradually applied.

Media service providers who broadcast content qualified as disinformation shall also be fined from 40,000 Lei to 70,000 Lei (2000 to 3600 Euro).

It is surprising that the broadcast of content qualified as disinformation is considered to be more serious than failing to protect minors, and that the broadcast of content qualified as disinformation is considered on the same level as illegal content such as (a) likely to propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination based on sex, race, nationality, religion, disability or sexual orientation; b) disseminating child pornography’.

Also, a failure to ‘(1b) to report a correct fact or event and to verify and present the information impartially and in good
faith may eventually lead to suspension of broadcast. There appears to be no threat to suspension of broadcasts for the repeated violations of failure to comply with obligations to protect minors.

**Key findings and recommendations**

The Code should be adapted to align with the provisions on establishment of jurisdiction of audiovisual media services in the Audiovisual Media Services Directive. A separate provision outlining the criteria for establishing jurisdiction of VSPS, according to the Directive is needed.

The Code should enshrine the principle of freedom of reception and retransmission. This should then be supplemented by a clear set of provisions on derogations from this principle.

It would be useful if there was a stand-alone provision in the law that clearly addressed prohibited content. As can be seen from the details on derogations from the Directive, prohibited content forms the basis for derogations. However, failure to abide with rules on regulated content - in particular as regards protection of minors - can also justify derogations from the freedom of reception and retransmission.

These derogations should reflect the procedures laid out in the Directive.

The report referred to in the text above provided significant detail regarding the various tools and legal bases available to the Republic of Moldova to protect its citizens from manipulation particularly during times of crisis and/or threats to the integrity of the State. These have a much broader reach than audiovisual media regulation. This document should serve as a source for a road map for fighting disinformation for the Government authorities.

Definitions and provisions in the Code should be improved to ensure that there are distinctions between the disinformation that is intentional and presents a threat to the integrity of the state or public security (and requiring intervention also of other agencies), other forms of ‘disinformation’ which may be harmful but have to be addressed via the recommended approaches of international organisations - EU, Council of Europe, and the idea of ‘accurate information’. The definition of ‘disinformation’ should be updated to clarify what is not ‘disinformation’ under this law.

Consider updating the definition of ‘hate speech’ to align with the Council of Europe standards. Alongside the regulator Guidelines for monitoring hate speech, the regulator should consider developing clear guidance for media operators with regard to the differentiated types of hate speech as described in the Council of Europe Recommendation CM/Rec(2022)16[1].

The Audiovisual Council should not regulate ‘accurate information’ on audiovisual media services and currently the Audiovisual Media Code provides no clear distinction between the regulatory response to what they may deem as not being ‘accurate information’ and what they deem as being ‘disinformation’.

The regulator can however introduce guidance on these issues in relation to news and in relation to coverage of elections. It is useful for the Code to introduce a set of principles by which media services should operate, as for example under Chapter 2. Truth and fairness in news and current affairs can be enhanced by Guidance from the regulator, via internal journalism ethics of the media services, using the complaints system to the media services and/or the regulator, the right of reply etc.
4 Protection of vulnerable people

4.1 Protection of minors

The Audiovisual Code covers most of the key issues in relation to the protection of minors, and the Audiovisual Content Regulation expands on these issues. Neither document clearly outlines the obligations on video-sharing platforms nor the measures they should take to protect minors (see further under chapter 6). In addition, there should be a prohibition of commercial use of personal data of minors collected when implementing measures such as age verification systems (on video-on demand services and on video-sharing platform services).

The Code does not require that media service providers effectively reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS). While the Audiovisual Content Regulation makes some reference to advertising for food – and particularly claims about the health benefits of certain foods – there is no mention in either the Audiovisual Media Services Code or the Audiovisual Content Regulation of the requirement that audiovisual media services effectively reduce the exposure of children to advertising for HFSS foods. Sponsorship by such food brands is forbidden in the programmes for children under 12 in the Regulation (paragraph 125) but no mention is made of other types of advertising. In contrast the rules to effectively reduce the exposure of children to ACCs for alcohol are very strong on linear audiovisual media and include a watershed for broadcasting such advertising.

4.2 Rights of people with disabilities

Article 16 addresses accessibility of content for people with sensory disabilities and recognises the right to access audiovisual content. This is also a fundamental right under the Convention on the Rights of People with Disabilities (CRPD). However, it does not reflect the new approach of the Directive whereby Member States should ensure that audiovisual media services continuously and progressively improve the accessibility of content. The law also does not require the reporting to the regulator of media service providers regarding progress in this area, and no mention is made of the possibility to encourage action plans. In addition, there is no provision for a contact point to provide information and receive complaints. In most countries, the audiovisual media regulator is assigned as the contact point.

The Code does include obligations for audiovisual media service providers, and under Article 22 does include an obligation to ensure that the dissemination of information on states of emergency, siege and war is made accessible. While some more detail is included in the 2024 Audiovisual Content Regulation, there is still no reference to a requirement for audiovisual media service providers to report on their progress to the regulator, and no encouragement in the development of action plans. In addition, the regulation does not mention the establishment of an online contact point. Hence, neither the Audiovisual Code nor the Audiovisual Content regulation fully align with European acquis.

Key findings and recommendations

Include the prohibition of the commercial use of the personal data of minors by audiovisual media services and video-sharing platform services who introduce age verification systems (and other protection measures) to protect children (minors) from harmful content. Article 15 of the Code

Introduce a requirement that audiovisual media services effectively reduce the exposure of children to advertising for HFSS foods.

Provisions on video-sharing platform services (VSPS) need to be introduced (see further below) and the obligation for VSPS to protect children need to be included in line with the Directive.

Introduce the wording in Article 16 that the state should ensure that audiovisual media services continuously and progressively improve the accessibility of content. Develop a secondary Act to properly implement these provisions and consult with the services to assess what may represent progression in this area. Introduce planning and reporting.

Ensure proportionality in the obligations noting that some media services may have stronger obligations than others based on their size, resources, remit etc.

Encourage a gradual progression on what is made accessible from one year to the next - or over a three or five year period.

Designate the NRA as a contact point for people and organisations representing people with sensory disabilities.
5 Independence of national regulatory authorities

Council of Europe (CoE) standards have had a strong influence on the development of legislative frameworks regarding the establishment and functioning of national regulatory authorities (NRAs) and the measures needed to guarantee their independence.

In 2000, the CoE issued a recommendation addressing the general legislative framework; the appointment, composition and functioning of regulatory authorities; financial independence; powers and competences; and accountability. A further Declaration of the Committee of Ministers was published in 2008. These standards also played a significant role in the development of the relevant provisions in the AVMS Directive (Article 30).

The Independence and autonomy of the NRA is not just something to be confirmed in a stated provision. It must also be apparent in the provisions around the functioning of the regulator, its financial resources and independence, the methods of appointing and dismissal of management and governing bodies, and also in the actual practice of implementation of the Law.

5.1 Powers and competences of the Audiovisual Council

As discussed in more detail in the next chapter regarding video-sharing platforms, the Code does not align with the AVMS Directive with regard to the approach and regulatory regime for video-sharing platforms. Instead it is expected that VSPS are regulated in the same way as audiovisual media services. Hence, the Council is given powers such as the development, supervision and implementation of (among others) methodologies to monitor the content of video-sharing platforms. This represents a rather impossible task (see further the discussion under chapter 6). Another potential challenge is the monitoring of disinformation (also discussed under chapter 6).

5.2 Financing of the Audiovisual Council

The mechanism for financing of the Audiovisual Council does not provide for stable or sufficient financial resources. The fact that an allocation is decided every year under a budget law implies that the regulator is reliant on political favour in relation to the budget allocation. Under Article 30 (4) of the Directive it is stressed that:

4. Member States shall ensure that national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively and to contribute to the work of ERGA. Member States shall ensure that national regulatory authorities or bodies are provided with their own annual budgets, which shall be made public.

5.3 Appointment and dismissal of management and governing bodies

The main issues of concern with regard to the Audiovisual Council relate to the appointment and dismissal of the Council. Under Article 30 of the AVMS Directive, it is stated among others that:

5. Member States shall lay down in their national law the conditions and the procedures for the appointment and dismissal of the heads of national regulatory authorities and bodies or the members of the collegiate body fulfilling that function, including the duration of the mandate. The procedures shall be transparent, non-discriminatory and guarantee the requisite degree of independence. The head of a national regulatory authority or body or the members of the collegiate body fulfilling that function within a national regulatory authority or body may be dismissed if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance at national level. A dismissal decision shall be duly justified, subject to prior notification and made available to the public.

The Council of Europe also has several recommendations in this area, that emphasise that:

‘precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure. (...) In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal.’

Article 77 introduces a criteria for dismissal based on the ‘finding of improper performance or non-performance of duties’, and the vague term ‘defective duty’ which is highly unusual. The notion of improper performance should already be covered by rules that relate to illegal or fraudulent activities only.

In his analysis of the legal framework, Richter (2023) noted that the possible dismissal of the members of the Audiovisual Council (CA), are such that the Parliament can dismiss them at any time on the basis of a performance. In the European Commission’s 2023 Report on the Moldova application for membership, it was noted that this provision ‘is not aligned with the EU Audiovisual Media Services Directive which states that appointment and dismissal procedures must guarantee the requisite degree of independence’ [of the NRA]. Also,
an OSCE expert analysis commented on the issue of appointment and dismissal of the members of the Council and stated that these provisions completely undermine the independence of such bodies and should be removed.\(^{18}\)

Article 77 of the Audiovisual Code also allows for the automatic dismissal of the Council.

(42) **On the basis of the report of the relevant parliamentary committee, the Parliament, by a majority vote of the elected members, may dismiss the members of the Audiovisual Council. The decision of the Parliament to remove the member of the Audiovisual Council from office may be challenged in court under the conditions and within the time limits laid down in the Administrative Code.**

As already emphasised above, the procedure for an assessment by a parliamentary Committee of the performance of one or all of the Council Members with the possibility to dismiss them undermines the independence of the regulatory authority.

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**Key findings and recommendations**

Some of the powers and tasks of the Audiovisual Council should be reviewed with reference to the discussions in chapter 6 regarding the regulation of video-sharing platforms.

The main issues that arise in the Code concerns the control that Parliament is given in relation to dismissing a member or all members of the Audiovisual Council. These procedures are not in line with European standards and practice and do not align with the Audiovisual Media Services Directive. Hence they should be repealed.

A similar control is exerted over the governing body of the public service broadcaster (see chapter 7 below) which is not in line with European standards.

The procedure for allocating funds to the Audiovisual Council via annual budget laws is also a threat to independence placing the regulator in a situation of being reliant on political favour.
6 Video-sharing platform services

6.1 The distinct regulatory framework for video-sharing platform services

The Audiovisual Media Services Directive provides a regulatory framework for audiovisual media services – including linear (broadcast) and non-linear (on-demand) media services. However, the regulatory regime introduced for video-sharing platform services (VSPS) is very different and distinct from that for audiovisual media services. This has brought about a shift in the approach to regulation – to what is now termed a systemic approach. The regulated services become responsible for achieving regulated aims via a range of recommended measures to be assessed by the relevant regulatory authority. This is a natural consequence of the fact that monitoring of content and actions on the Internet is an impossible task for the national regulatory authority (NRA).

It is also reflective of the key differences between audiovisual media services who exert editorial control over content, and video-sharing platforms who do not have editorial control as they distribute third-party user-generated content. As will be further outlined below, their responsibility arises from the organisation of the content.

As noted above, the definition provided in the law is incorrect as it defines a VSPS as an ‘audiovisual media service’, which it is not. The Law does not outline the criteria for establishing the jurisdiction of VSPS (mentioned, but not elaborated under Article 2 (4e)), which are also distinct from the provisions relevant for establishing jurisdiction of audiovisual media services.

Fundamentally, the Law aims to treat VSPS as though they are AVMS. For example, Article 75 (3) refers to the powers of the Audiovisual Council as including ‘(b) content regulation of linear and non-linear audiovisual media services and video-sharing platform services.’ Likewise, Article 75 (3h) refers to methodologies for monitoring the content of video-sharing platforms.

The Audiovisual Media Services Directive does provide an approach to content regulation of video-sharing platform services. In particular in the Recital paragraph (47), it is emphasised that ‘a significant share of the content provided on video-sharing platform services is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes, user-generated videos and audiovisual commercial communications, including by automatic means or algorithms.’

VSPS, therefore, do have responsibility for content as they impact its organisation. The Directive requires VSPS providers to ‘take appropriate measures to protect minors from content that may impair their physical, mental or moral development’ and to ‘take appropriate measures to protect the general public from content that contains incitement to violence or hatred directed against a group or a member of a group on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union (the ‘Charter’), or the dissemination of which constitutes a criminal offence under Union law.’

The regulatory authority then has the role of assessing the measures taken by the services in order to ascertain if they are achieving the regulatory aims. This is an example of a co-regulatory approach, where in this instance the legislation sets the aims of the regulation and the NRA outlines methods to achieve these aims. The services then apply measures to achieve the outcomes and report on the activities and outcomes. The NRA retains the backstop powers in order to assess if the system in place is working. This systemic approach, whereby the operators are required to introduce a range of measures to reduce the risk of harm while reporting to a regulatory body is also foreseen in the Digital Services Act (as discussed above).

The main conclusion here is that the Audiovisual Code needs to be adjusted to correctly implement a regulatory regime for VSPS that is in line with the EU acquis.

Article 11 of the Audiovisual Code makes reference to prohibited content, although as noted above the drafting of this article is not ideal. In addition (see further below), there is an absence regarding obligations for VSPS providers and also no reference to the measures that should be taken in order for them to protect minors and the public from harmful and illegal content.

6.2 Examples of approaches from other jurisdictions

It is strongly recommended to introduce a specific section or chapter in the Code that deals with VSPS. It has been common practice in other European countries to extend the scope of the Directive to video-sharing platforms by adapting the national legislation to update the subject of the law, and by including the relevant definitions alongside all definitions in the law, and by introducing a specific chapter on video-sharing platforms (Croatia, Spain, Slovenia, Italy, France, Greece, and in the draft laws of Montenegro and Kosovo). These specific chapters on VSPS generally include: the relevant provisions on Jurisdiction (Croatia, France, Greece, Italy, Slovenia, and in the draft laws of Montenegro and Kosovo); obligations of VSPS, (Croatia, France, Greece, Slovenia, Spain, Italy, and in the draft laws of Montenegro and Kosovo); measures to be taken by VSPS (Croatia, France, Greece, Spain, Slovenia, Italy, and in the draft laws of Montenegro and Kosovo).19
In addition, various national laws have included reference to VSPs in relation to the competences of the NRA, and also under the general provision on media literacy (Spain), under general provisions regarding self- and co-regulation (Croa
tia, Spain), regarding requirements for registration (Croa
tia, Spain, Slovenija and the draft laws of Montenegro and Kobe
so), regarding requirements to pay a fee to the Agency (Croa
ntia, Slovenia), and media transparency requirements and to
provide an impressum (Spain).

6.3 Obligations and measures to ensure protection against harm

As noted above, the obligations on VSPs should be clearly
outlined in the Law. Most national laws provide the details
regarding the appropriate measures that should be taken
by VSPs to ensure protection against harm. In many cases,
a Second Directive (or regulation) is also developed to pro
vide more detail in this area. Under the Audiovisual Media Services
Directive, video-sharing platform services have the following
obligations – to protect:

(a) minors from programmes, user-generated videos and
audiovisual commercial communications which may impair
their physical, mental or moral development in accordance
with Article 6a(1);

(b) the general public from programmes, user-generated
videos and audiovisual commercial communications
containing incitement to violence or hatred directed against
a group of persons or a member of a group based on any
of the grounds referred to in Article 21 of the Charter;

(c) the general public from programmes, user-generated
videos and audiovisual commercial communications
containing content the dissemination of which constitutes
an activity which is a criminal offence under Union law,
namely public provocation to commit a terrorist offence
as set out in Article 5 of Directive (EU) 2017/541, offences
concerning child pornography as set out in Article 5(4)
of Directive 2011/93/EU of the European Parliament and of
the Council (1) and offences concerning racism and
xenophobia as set out in Article 1 of Framework Decision
2008/913/JHA.20

Hence, with regard to the protection of minors, they have
the same obligations as audiovisual media services, but this
needs to be achieved in a different way given the nature of
the platforms. Regarding content of audiovisual commercial
communications, they also have the same obligations
as audiovisual media services, but this also needs to be
achieved in a different way. With regard to the measures to
be used to ensure protection, these are outlined in the table
below, and include requiring Terms and conditions (T&C) for
users uploading content, age verification systems, parental
controls, complaint systems, and the use of trusted flagg
ers, among others.

Measures to be taken by video-sharing platforms according to the
AVMS Directive

<table>
<thead>
<tr>
<th>Measure</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1; these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(b)</td>
<td>including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers; these are obligations relating to ACCS</td>
</tr>
<tr>
<td>(c)</td>
<td>having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know; these are obligations relating to ACCS</td>
</tr>
<tr>
<td>(d)</td>
<td>establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider the content referred to in paragraph 1 provided on its platform; these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(e)</td>
<td>establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d); these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(f)</td>
<td>establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors; these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(g)</td>
<td>establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1; these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(h)</td>
<td>providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors; these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(i)</td>
<td>establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users’ complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h); these are obligations relating to harmful and illegal content</td>
</tr>
<tr>
<td>(j)</td>
<td>providing for effective media literacy measures and tools and raising users’ awareness of those measures and tools; these are obligations relating to harmful and illegal content</td>
</tr>
</tbody>
</table>

6.4 Relationship with the Digital Services Act

The Digital Services Act (DSA) covers issues that are broader
than those relevant to audiovisual content or user-generated
content and follows the principle that what is illegal offline is
illegal online. It is also intended to deal with online services
and consumer protection regarding products and services.
Hence, the DSA cannot be fully implemented via the media legislative framework. The DSA provides a framework for the implementation of regulations covering consumer protection, copyright, online safety among others. It requires cooperation between a range of different authorities. ‘The digital environment has prompted policy-makers and regulatory authorities to review the frontiers of cooperative schemes, to take into account not only the cross-border challenges but also the cross-sectoral ones’.21

In many countries, collaborative and cooperative approaches to the regulation of the online sphere have been developed. Many of these are outlined in detail in a recent report jointly authored by the European Audiovisual Observatory and the European Platform of Regulatory Authorities (EPRA) examining the issue of Media regulatory authorities and the challenges of cooperation.22 Examples of cooperative networks include those developed in Sweden, the Netherlands, UK and Ireland, and these bring together competition, data protection, consumer, election and media regulators.23 In addition, cooperation is needed with police and prosecutors in relation to criminal, illegal content, content linked to committing a crime etc.

The areas where the DSA intersects with the Audiovisual Media Services Directive with regard to harmful and illegal content on video-sharing provides for more detail on how the AVMS Directive can be implemented.

The Council of Europe, in its 2018 recommendation on the roles and responsibilities of internet intermediaries, recognised the complexity of the term ‘internet intermediary’ and noted that: ‘a wide, diverse and rapidly evolving range of players, commonly referred to as ‘internet intermediaries’, facilitate interactions on the internet between natural land legal persons by offering and performing a variety of functions and services’. The Recommendation emphasised that intermediaries have the responsibility to respect human rights and to employ adequate measures regardless of their size, sector, operational context, ownership structure or nature. It also included a range of measures including: due diligence assessments of their own compliance with the responsibility; the use of T&C or terms of service policies and their enforcement; transparency of algorithms; reporting among others.

6.5 Comments on the Audiovisual Content Regulation

The Audiovisual Content Regulation, as amended in 2024 includes in its scope (Article 1) video-sharing platform services. However, as with the Audiovisual Code, it still groups these services with audiovisual media services without introducing a distinct regulatory regime. For example, there is a range of content under Chapter IV, which can be identified as harmful content (see table below).

It is apparent that the Audiovisual Content Regulation attempts to regulate a range of content that is more likely to appear on video-sharing platforms and therefore should be termed ‘user-generated content’, however, under the regulation certain types of content are still labelled as ‘audiovisual programme content’ It is recommended that the regulator develop an additional Regulation dedicated to video-sharing platforms (as suggested above), and include in this a section on harmful content.

Chapter IV - AUDIOVISUAL PROGRAMS PROHIBITED FOR BROADCAST IN THE MEANING OF ART. 11 PAR. (2) FROM CSMA

96. Audiovisual contents are prohibited that represent:

a) detailed discussions about methods, locations and outbreaks of suicide or self-harm;
b) explicit descriptions of self-harm or suicide;
c) extremely dangerous challenges, involving an imminent risk of physical harm;
d) dangerous or threatening pranks that cause victims to fear serious and imminent physical danger or that cause serious emotional distress;
e) instructions to kill or injure or instructions to build explosive objects with the intention to injure or kill people;
f) abusing drugs or giving instructions on how to manufacture high-risk drugs (which can cause physical dependence);
g) glorifying or encouraging anorexic behavior, abnormal or disordered eating habits that negatively affect a person's health (including the consumption of non-food products);
h) promoting or glorifying violent tragedies, such as gun attacks in shops, schools, etc.;
i) instructions for theft or fraud;
j) instructions for using computers or information technology with the intention of stealing login data, compromising personal data or causing serious harm to others, such as compromising social network accounts (hacking).

In addition, it is important to distinguish between illegal and harmful content when developing regulation to address such content on video-sharing platforms. Certain content addressed under both the AVMS Directive and the Digital Services Act is illegal under EU law and also under national laws. This includes public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia (AVMS Directive, Art. 28b (1)). The Digital Services Act (Recital 12) explains what can be considered as ‘illegal content’ on the basis of relevant EU and national laws:

The concept should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the
applicable law is either itself illegal – such as illegal hate speech, terrorist content and unlawful discriminatory content – or that the applicable rules make illegal in view of the fact that it relates to activities that are illegal. Examples include the sharing of images depicting child sexual abuse, the unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorised use of copyright protected material, the illegal offer of pornography) may also be prohibited from broadcasting linear and on-demand services and requires age verification. Internal affairs) must establish systems for requiring and judicial and state authorities (prosecutors, Ministry of internal affairs) to implement measures that prevent pornography providers to implement measures that prevent children from accessing their services and being exposed to their content. Insufficient age verification measures on adult VSPs do not only risk exposing minors to pornography, but because these VSPs also allow users to be content creators, this increases the risk of child sexual exploitation.25 The AVMS Directive clearly states that VSPS must comply with the rules concerning the protection of minors that are outlined for broadcasters under Article 6a (1) to ensure that services and content which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. But there are other areas of harmful content that are specific to user generated content. The Regulation should include a definition of 'user-generated content' and have separate sections in the regulation (or a separate regulation) to deal with this. The content outlined in the table above under the Audiovisual Content Regulation also mixes audiovisual broadcast content under the editorial responsibility of the media service (audiovisual media services according to the correct definitions) with 'user-generated' content not under the editorial control of the service (video-sharing platform according to the correct definition). Regardless of the approach to categorising content, there should be distinctions between that which is illegal and that which is harmful.

As an example, the Draft Online Safety Code in Ireland includes a distinction between different types of online content: audiovisual commercial communications harmful to children; audiovisual commercial communications harmful to the general public; illegal content harmful to children; illegal content harmful to the general public; Regulated content harmful to children; Regulated content harmful to the general public.26 Further, the Draft Code provides definitions such as:

- ‘illegal content harmful to children’ - comprises the relevant categories of offence-based harmful online content defined in the Act. This includes various types of content involved in sexual offences involving children, as well as illegal threats, harassment and grossly offensive communications where the victim is a child, or the content is likely to be seen by a child.

- ‘regulated content harmful to children’ - includes age-inappropriate content such as pornography, and content depicting gross and gratuitous violence. It also includes dangerous challenges and covers a range of content that is included if it poses a risk to the life, physical health, mental health and/or safety of a child: cyber-bullying, encouraging eating or feeding disorders, encouragement of self-harm or suicide, and information about methods of self-harm or suicide.

These definitions address issues that are broader than content as they also relate to behaviours (for example cyberbullying) and are therefore broader than what may be needed for definitions in the Moldovan Audiovisual Regulations, but may represent harms that could be addressed in relation to a broader online safety code. At the same time user-generated videos are frequently the source of problematic content around anorexia, self-harm and suicide.

It is important that certain user-generated content is labelled as harmful including that which can pose a risk to the life, physical health, mental health and/or safety of a child. However, a simple prohibition of such content in the online world is unlikely to have an impact. There are strong calls for dealing with such content and one can hope that solutions are found at the European level and imposed on...
the platforms. It has been shown that the real problem in relation to the content that children are exposed to concerns the use of algorithms and recommender systems. The findings of recent reports by Amnesty International stressed that: ‘TikTok’s content recommender system and its invasive data collection practices pose a danger to young users of the platform by amplifying depressive and suicidal content that risk worsening existing mental health challenges.’ In February 2024, the European Commission opened formal proceedings to assess whether TikTok may have breached the Digital Services Act (DSA) in areas linked to the protection of minors, advertising transparency, data access for researchers, as well as the risk management of addictive design and harmful content.

The audiovisual legislative framework needs to properly align with EU acquis and practice – in particular with regard to the relevant provisions on VSPS in the AVMS Directive and the DSA – and the obligations and measures that they introduce. Regarding illegal content, VSPS will be required to remove this expeditiously when notified by authorities and to cooperate with authorities (such as police, judiciaries, internal affairs), which may require the provision of evidence (capturing data). The AVMS Directive outlines clearly the nature of illegal content as noted above: public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia. The DSA, as noted above, covers a broader area of criminal or illegal content.

Trusted flaggers are referred to in both the AVMS Directive and are organisations that can signal to a platform the presence of illegal content. Trusted flaggers can also signal content that is considered harmful to children and/or to the general public. Protection of minors requires age verification and parental controls, while all platforms should provide T&C for users in order to clarify the rules. As outlined above, there is a strong drive towards controlling or limiting the impact of recommender systems.

The DSA also introduces additional stronger requirements for the very large online platforms and online search engines (VLOPS and VLOSES) to carry out risk mitigation activities (this will be discussed briefly below).

### 6.6 Lack of sanctions for video-sharing platform service providers

Under Article 84, which details penalties for violations of the Audiovisual Code, no penalties are specified for video-sharing platform service providers. Paragraph 1 refers to three distinct groups – media service providers, media service distributors, and video-sharing platform service providers, who ‘shall be liable for infringements of audiovisual legislation in accordance with this Article and the legislation in force.’ However, all other paragraphs under Article 84 refer only to media service providers or media service distributors. It should be noted that the definition for ‘media service provider’ under the Code is ‘the natural or legal person bears editorial responsibility for the choice of audiovisual content of the audiovisual media service and who determines the organisation of that service.’ Hence, there are no clear sanctions for video-sharing platform service providers (and the Audiovisual Content regulation refers back to Article 84 of the Code). Alongside the introduction of clear obligations for these services, there needs to be a requirement to introduce measures to protect minors and the general public. There needs to be sanctions for failure to introduce measures prescribed by the Law or by a Secondary Regulatory Act, or via co-regulation.

### Key findings and recommendations

Provide a correct definition of video-sharing platform services (VSPS) that does not define them as audiovisual media services.

Introduce a dedicated chapter in the Code for video-sharing platform services, and include the relevant provisions from the Directive regarding the criteria for establishing jurisdiction of services.

In line with practice in other European countries provide for a notification/registration requirement for VSPS with the regulator. Oblige VSPS to provide an impressum and a contact point.

Include the relevant provisions on obligations of VSPS in the Code (and Regulation).

Include the complete list of measures to ensure these obligations are met by VSPS in the Code (and/or the Regulation). This should include at a minimum the requirement that all online platforms regardless of size introduce Terms and Conditions (T&C), complaint systems and parental controls.

Develop a secondary regulation dealing with content on VSPS, either separate to the Audiovisual Content Regulation, or as an additional section within it.

The Regulation needs to define ‘user-generated content’ and both the Audiovisual Media Code and the Audiovisual Content Regulation need to reflect the different regulatory approaches to (1) audiovisual media content under the editorial control of audiovisual media services, and to (2) user-generated content not under the editorial control of video-sharing platform services but for which they have obligations given their role in organising such content via algorithms, tagging etc.
Hence illegal and harmful content should be addressed in the regulatory regime appropriate for audiovisual media services (broadcast linear and on-demand non-linear services), and they should be addressed in the regulatory regime appropriate for video-sharing platform services.

Secondary regulation should also clearly list the examples of what is illegal and what is harmful and the actions to be taken by services, the measures required of services, and the actions to be taken by authorities.

T&Cs should detail the rules regarding specific types of content, as indicated above with a distinction between illegal and harmful contents, and details regarding the protection of minors and the protection of the general public from harm.

The T&Cs should explain what actions the platform will take in relation to such contents, which could include (regarding illegal content), reporting contents and the user to the relevant legal authorities or the police.

The platforms must introduce a complaints system and allow for a complaints procedure from the public.

The Government and the Audiovisual Council with other relevant bodies should establish who are the “trusted flaggers” in Moldova, and the platforms must recognise these flaggers and deal with their complaints expeditiously. An additional complaints system for users should be introduced.

Alongside the complaints system, the platforms must provide the following measures to protect minors and empower parents – age verification systems and parental control systems.

The T&Cs should include explanations regarding (illegal) and harmful audiovisual commercial communications (ACCs) and rules to ensure transparency of audiovisual commercial communications. Other measures require that the platform introduces a functionality whereby users must identify where user-generated content includes ACCs).

Video-sharing platforms should provide for effective media literacy measures and tools and raise users’ awareness of those measures and tools.

The role of the regulator is to assess whether VSPS have put the required measures in place and whether these are having an impact.

Clear sanctions can be introduced regarding failure to introduce the necessary measures, failure to respond to requirements of authorities regarding illegal content, failure to have a complaints system and to deal with trusted flaggers.
7 Provisions related to the public broadcasters

The Code regulates public service broadcasting (in general) under articles 31 to 35 and the national public service broadcaster (specifically) under Articles 36 to 48. Overall, this section aligns quite well with European standards. The legal framework should have a stronger support for the independence and institutional autonomy of public service broadcasters. In addition, with regard to the national public broadcaster, some provisions should be redrafted in order to align with EU rules on State Aid, in particular as regards the distinction between public service activities and commercial activities.

The 2023 European Commission Report on Moldova 2023 emphasised that: ‘to ensure compliance with the European Media Freedom Act, the Audiovisual Media Services Code must address political bias in state media.’\(^{29}\) The European Media Freedom Act (EMFA), under Recital 18 highlights the necessity to put in place legal safeguards for the independent functioning of public service media across the Union. Under Article 5(3), it requires that Member States ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.\(^{30}\)

Hence, two key areas related to political independence are the provision of adequate funding, and also the independence from political interference, which is strongly linked to governance. Both of these issues are discussed below.

7.1 Core values and remit

The European Commission has recognised that public service broadcasting due to the: ‘cultural, social and democratic functions which it discharges for the common good, has a vital significance for ensuring democracy, pluralism, social cohesion, cultural and linguistic diversity.’\(^{31}\)

The Council of Europe Recommendation CM/Rec (2007)3 emphasises core values from Council of Europe standards, which have defined public service broadcasting as:

\(\textbf{a)}\) a reference point for all members of the public, offering universal access; \(\textbf{b)}\) a factor for social cohesion and integration of all individuals, groups and communities; \(\textbf{c)}\) a source of impartial and independent information and comment, and of innovative and varied content which complies with high ethical and quality standards; \(\textbf{d)}\) a forum for pluralistic public discussion and a means of promoting broader democratic participation of individuals; \(\textbf{e)}\) an active contributor to audiovisual creation and production and greater appreciation and dissemination of the diversity of national and European cultural heritage.\(^{32}\)

The mission (Article 31), activities (Article 33) and duties (Article 35) of public service broadcasters outlined in the Code all reflect these values.

In addition, it is important to reiterate the important role that public media play in ensuring political pluralism as emphasised by the Council of Europe (2018) who called on states to ‘… recognise the crucial role of independent public service media organisations in fostering public debate, political pluralism and awareness of diverse opinions. States should accordingly guarantee adequate conditions for public service media to continue to play this role in the multimedia landscape, including by providing them with appropriate support for innovation and the development of digital strategies and new services.’\(^{33}\)

The key role that public service media plays in countering disinformation is addressed in the Resolution 2255 (2019) of the Parliamentary Assembly on ‘Public service media in the context of disinformation and propaganda’. The Resolution (among others) states that member states should: ‘guarantee editorial independence, as well as sufficient and stable funding, for public service media, to ensure that they are capable of producing accurate, reliable news and information and ensuring quality journalism deserving the trust of the public; and … secure adequate funding to public service media, so that they can allocate sufficient resources to innovation in content, form and technology to foster their role as major players in countering disinformation and propaganda and as a cutting-edge stakeholder in protecting communication and media ecosystems in Europe.’\(^{34}\)

One activity that is listed in the Code is rather unusual for a public service broadcaster and that is encouraging user-generated content (Article 33 (1b). This would present an additional challenge for public service broadcasters to ensure that the type of content is being placed on their platforms was not in violation of the provisions in the law. A better approach would be to encourage some mentoring of students or young creative people and provide support in the creation of shorts or short movies that could be distributed via online platforms. Other forms of engagement include internships, visits to schools etc.

7.2 Independence and autonomy

In order to fulfil their remit and to serve the citizens as outlined above, it is necessary for public service broadcasters (PSBs) to be independent and autonomous. Independence also requires that PSBs have adequate and stable resources to fulfil their remit. Article 34 of the Audiovisual Media Code addresses the editorial independence of PSBs, particularly in relation to ‘Interference by public authorities, parties and other socio-political organisations, trade unions, commercial and economic organisations or interest groups’. Article 34 (4) states that the ‘management and supervisory bodies of the public media service provider are obliged to ensure editorial independence, institutional autonomy and creative freedom of employees within the institution’.

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However, the Code does not place such an obligation on the State or the Government with regard to the institutional independence and autonomy of PSBs. The Council of Europe 1996 Recommendation on the guarantee of the independence of public service broadcasting emphasised that: ‘The legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy, including as regards recruitment, employment and staff management, the management of financial resources or the execution of the budget’. Some useful examples of provisions that deal with this are provided below.

Croatian law on HRT under Article 17:

1) HRT is independent in its operation; 2) The independence of HRT is achieved through the independent performance of activities and through programme and editorial independence of HRT, especially in the planning and production of programmes and determining the programme scheme; 3) The independence of HRT is achieved through independent and stable financing of the activity of providing public services; 4) The independence of HRT is also reflected in the right to: - according to the competence of its bodies, it regulates, in accordance with the provisions of this Act, its internal organisation and way of working, - general acts govern the employment of workers and their rights and duties in accordance with the law and the collective agreement.

Slovenian law on public service broadcasting, Article 2 enshrines the duty of the state to ensure institutional autonomy:

Article 2 (1) The founder of the public institution of the Radio and Television Corporation of Slovenia is the Republic of Slovenia. The duty of the founder shall be to ensure the institutional autonomy and editorial independence of RTV Slovenia, and to ensure appropriate financing for the provision of public service.

Regarding appointments within the organisation, this is decided by the Management Board in consultation with the programming Board. Under Article 21a (1): Directors and heads of units specified in the statute are appointed by the administration on the basis of a public tender in accordance with the statute. The assistant to the president of the board, who professionally manages the two national programmes, is appointed by the board in agreement with the competent Programme Committee. (3) The administration also appoints and dismisses other managers specified by the statute.

Serbian law on Public Service Broadcasting has a specific article: Article 5 – Institutional Autonomy:

In carrying out its basic activity, the public media service has institutional autonomy and editorial independence, especially in terms of:

1) establishing the concept and determining the programme contents, in accordance with the law; 2) editing the programme scheme; 3) organisation of activities; 4) selection of managers, editors-in-chief and responsible editors and employment; 5) procurement and sale of goods and services; 6) management of financial resources, in accordance with the law; 7) preparation and execution of the financial plan; 8) negotiations, i.e. preparation and signing of legal acts related to the operations of institutions; 9) selection of a representative in legal affairs and in other legal matters.

A similar provision should be introduced under Article 34, which should be renamed as (addition in italics) ‘Editorial independence and institutional independence and autonomy of public media service providers.’ Such a provision could also be placed under Article 32 regarding the legal status of public service broadcasters. This Article identifies the founders of the public media service broadcasters, and should be supplemented by an additional paragraph stating that ‘the duty of the founders of public service broadcasters shall be to ensure their institutional autonomy and editorial independence’. It is advisable to adjust both articles as one applies to the duty of the founder (parliaments or assemblies), and the second to the duty of the State to guarantee editorial and institutional independence.

7.3 Funding

7.3.1 Methods of funding

The other key element for ensuring independence, and in particular for preventing ‘political bias’, is the guarantee of stable financing. To reiterate the relevant provisions in the European Media Freedom Act: Article 5(3) requires that Member States ensure that ‘public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.’

The Council of Europe Recommendation 1878 (2009) on Funding of public service broadcasting stressed that Member States should (among others):

‘7.3 guarantee public service broadcasters secure and appropriate means necessary for the fulfilment of their missions…

16.1. ensure that their public service broadcasters have a clear mission and adequate long-term funding possibilities for fulfilling this mission.’

In 2018, the Council of Europe has also stated the need for Member States to ‘ensure stable, sustainable, transparent and adequate funding for public service media on a multiyear basis in order to guarantee their independence from governmental, political and market pressures and enable them to provide a broad range of pluralistic information and diverse content’.

This is also reflected in the recital of the European Media Freedom Act (recital 31):

‘Preferably, such funding should be decided and appropriated on a multi-year basis, in line with the public service mission of public service media providers, to avoid potential for undue influence from yearly budget negotiations.’

The European Broadcasting Union (EBU) has also outlined the key principles for funding of PSM, which (among others) includes the principles that the funding should be:
Stable and adequate - a stable and predictable source of funding enabling full coverage of the public service remit in the digital media age; and independent from political interference - not reliant on political favour, thereby promoting public trust in PSM and its role as a truly indispensable service.40

According to the European Broadcasting Union (EBU), funding in 19 EBU countries continues to be based on a household TV licence fee.41 Some countries have adapted this approach to cover all potential devices for reception of media (computer, smart phones etc.). For the majority of countries, taxation or public funding is the main source of funding. Some countries have ringfence a fixed proportion of general tax revenues (for example, a specified proportion of GDP or income tax revenues). Other countries have introduced a public service media tax levied on households and businesses (e.g. Finland, Sweden). Another approach, similar to the licence fee model – is the so called ‘broadcasting charge’, or ‘public service media charge’ or ‘household charge’ (Germany and Switzerland).42

Ideally, there should be a complete change of the mode of funding towards a higher standard such as those outlined above. However, if this is not possible it is important that key issues of sufficient funding (to fulfil remit and to develop in the light of market challenges) and foreseeable funding (in order to efficiently plan and develop long term plans and strategies) should be present.

Article 41 of the Code deals with the budget of the national public service provider and states that:

‘(1) The budget of the national public media service provider is made up of subsidies from the state budget and own revenues. (2) The subsidies from the state budget shall be determined annually by the state budget law and shall represent the volume of subsidies from the state budget for the previous year, indexed to the consumer price index of the last fully executed budget year.’

The budget is decided annually in the state budget law and the provision seems to imply the provision of an equal amount of funding each year, which is index linked to the consumer price index. It is not clear what a ‘base-level’ of funding would be or how the broadcaster would be supported in development of new services. Neither does the law indicate any set % of the budget that is allocated to the PSB, which could introduce some foreseeability. It also appears that the funding of the PSB is still potentially influenced by yearly budget negotiations. This undermines the principle of ensuring that with regard to funding, the PSB is ‘not reliant on political favour.’ Such a reliance can pose a threat to the editorial independence of the PSB. A multi-year budget allocation approach (for example 3 or 5 years) in line with strategic planning of the PSB would enhance their ability to fulfil the remit.

It is noted that part of the budget of the PSB relies on donations. This is unfortunate given the important role that the public service broadcasters have and the: ‘cultural, social and democratic functions which it discharges for the common good, has a vital significance for ensuring democracy, pluralism, social cohesion, cultural and linguistic diversity’.43

7.3.2 Distinction between public service activities and commercial activities

The Code does not align with European Union State Aid rules. The 1997 Amsterdam Protocol to the Treaty of Amsterdam recognised the importance of Public Broadcasting and the right of Member States to fund public broadcasting ‘for the fulfilment of the public service remit as conferred, defined and organised in each Member State’.

With regard to State Aid rules, the 2001 Communication from the Commission laid out the rules that oblige PSM organisations to have separate accounts for their public and commercial activities. Commercial revenues may be used to subsidise a public broadcaster's public activities, but public funding cannot be used to subsidise commercial activities. However, there are certain nuances regarding this issue whereby programmes produced from public funds to implement the public service remit, may at the same time have an additional commercial value (sale to other broadcasters or operators or markets), and therefore can be sold in order to enhance commercial revenues. New services must be reviewed in order to assess their potential impact on the market.

The 2009 Communication from the Commission reiterated these rules and also recognised the need for public service broadcasting to ‘benefit from technological progress’, bring ‘the public the benefits of the new audiovisual and information services and the new technologies’ and to undertake ‘the development and diversification of activities in the digital age.’

There are many examples of how to update the provisions on PSB in the law in order to align with the requirements. It is important to define a clear remit, then to outline in detail the activities to be carried out by the PSB in order to fulfil this remit. The law should also clearly outline the potential commercial activities that the PSB is allowed to carry out. In addition, a separation of accounts between public and commercial activities is required in order to ensure transparency. State Aid rules require that:

- PSM organisations must have separate accounting for their public and commercial activities.
- Commercial revenues may be used to subsidise a public broadcaster’s public activities, but public funding cannot be used to subsidise commercial activities. However, there are certain nuances regarding this issue whereby programmes produced from public funds to implement the public service remit, may at the same time have an additional commercial value (sale to other broadcasters or operators or markets), and therefore can be sold in order to enhance commercial revenues.
- PSM organisations may introduce significant new audiovisual services on new distribution platforms intended to the general public, provided that they meet the democratic, social and cultural needs of the society and do not entail disproportionate effects on the market, which are not necessary for the fulfilment of the public service remit. Proposals should be reviewed in order to assess their potential impact on the market.

In the Croatian Law on the HRT, Article 4 details the activities related to implementing the public service remit, while Article 5 outlines the commercial activities that the HRT is allowed to carry out. Also, the Law in Montenegro covers these types of activities under Articles 4 and 5. An example of provisions related to commercial activities and the separation of accounts from the PSB Law in Slovenia is provided below.

**Slovenian PSB Law:**

**Article 14 - The principle of financial transparency in the performance of public service**

1. RTV Slovenia may, in accordance with the law, perform marketing activities in addition to public service to a limited extent, but operations in the field of marketing activities must be organised separately from public service.

2. The contribution to the programmes of RTV Slovenia, funds from the state budget and other public funds and revenues from the performance of public service may only be used for the performance of the public service specified in this Act.

3. Revenues from market activities may be used for co-financing public services or for the maintenance and expansion of market activities, but only in the areas specified by this Act.

4. Income and expenses from the performance of public service and income and expenses from market activities are kept in two separate accounts.

**Article 15**

1. The marketing activities of RTV Slovenia are: marketing of advertising time and marketing of programmes; technical and telecommunication services that are not an integral part of the public service; leasing of broadcast infrastructure and other real estate; publishing and concert activity; marketing software services, including interactive software services; commercial use of archival material.

**7.4 Governance of the national public service broadcasters**

With regard to the appointment of the Director General, Article 36 provides that the Director General shall be appointed by the Parliament on the proposal of the Supervisory and Development Board of the national public media service provider. These provisions of the Code were already analysed by an OSCE expert opinion in 2021, which concluded that they should be repealed in order to avoid the establishment of any direct mechanism of control or supervision of the Director General by the Parliament, instead of control by the Supervisory and Development Board. A recent (2022) report from the European Audiovisual Observatory provided a comparative overview of governance of public service broadcasters. The Directors General of public service media are appointed by the governing bodies of the PSBs in Austria, Croatia, Germany, the Czech Republic, Ireland, Slovenia, while in some countries the national media regulator plays an important role in the appointment of the Director General (or President), for example in France or Bulgaria.

Best practice in Europe shows that the governing boards of PSBs usually make decisions regarding appointment of the Director General. In addition, it is clear that the political bodies in Moldova (Parliament, Government and President) already play a significant role in appointing the Supervisory and Development Board (5 of 7 members). There should also be a clarity regarding a public tender for this position to be carried out by the Supervisory and Development Board. The Board should make the final decision on appointment.

In addition, there are no detailed professional qualifications for the position of Director General under Article 36-37, in comparison to the details under Article 43 regarding the qualifications of the Supervisory and Development Board. There should be minimum qualification and experience requirements for the Director General of the PSB including management and other relevant areas of experience in the field.

The provisions covering dismissal of the Board are also problematic and this has been highlighted in several reviews and analyses of the Code. A key document regarding standards of governance is the 1996 Council of Europe Recommendation on the guarantee of the independence of public service broadcasting, which emphasises the importance of the independence of the members of both the management and supervisory bodies. This includes the ways in which they are selected, their competencies and roles, and the rules regarding the exercise of their functions in an independent manner.

The 2012 Recommendation of the Committee of Ministers (CM) of the Council of Europe on public service media governance provided a set of guiding principles for public service media governance. The recommendation states that public service media need to operate and evolve within a sustainable governance framework, which secures both the necessary editorial independence and public accountability. Independence should be ensured in relation to appointments of heads and governing bodies.

In his analysis of the legal framework, Richter (2023) noted that the possible dismissal of the members of the Audiovisual Council (CA), and the governance body of TRM are such that the Parliament can dismiss them at any time on the basis of performance. In the European Commission's 2023 Report on the Moldova application for membership, it was noted that this provision ‘is not aligned with the EU Audiovisual Media Services Directive which states that appointment and
dismission procedures must ‘guarantee the requisite degree of independence’ [of the NRA].” 46

Also, the OSCE analysis (referenced above) raised serious concerns regarding the issue of appointment and dismissal of the members of the Board, and the potential for dismissal of the entire body. The analysis notes that:

‘The process of nomination appears to promote the participation of different political factions and civil society groups in the selection of the members of the Board. However, the wording of the text seems to provide the ‘relevant parliamentary committee’ the discretionary and potentially non-transparent power to decide on the approval or rejection of candidates before being considered and voted by the plenary, with the sole reference to a ‘reasoned decision’. In addition to this, the legal text does not establish the need for any qualified majority regarding the final election of the members of the Board. In line with applicable standards, the election of the members of the Board should require more than a simple majority (that is, 3/5 or 2/3), in order to avoid that the choice lays in the exclusive hands of a ruling parliamentary majority.’

Article 48 provides that ‘(3) Rejection by Parliament of the annual activity report shall entail the automatic dismissal of the members of the Supervisory and Development Board.’ This has also raised serious concerns among legal experts regarding the arbitrary nature of this provision.

‘This vague legal provision puts in the hands of the parliamentary majority the decision to dismiss and replace Board members based on mere convenience and political criteria. Such scenario may seriously erode the independence and the proper performance of managerial decisions by the members of the Board. Therefore, it must be repealed.” 49

Hence, the provisions regarding dismissal of the Board should be improved according to the recommendations of the OSCE report and in response to the criticism in the European Union reports, and the possibility to dismiss the collective body should be removed.

It is also important to note the relevant provisions introduced by the recently adopted European Media Freedom Act, which under Article 5 emphasise that:

2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law. The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.

Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.” 50

There is no indication that any of these dismissal procedures include the possibility for judicial review. Given the concerns of the OSCE and the European Union regarding these provisions, and the fact that they do not align with Council of Europe standards, it is highly recommended that they be updated to align with European standards.

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**Key findings and recommendations**

The institutional autonomy and independence of public service broadcasters needs to be strengthened in the law, according to Council of Europe standards. It is recommended to add a new provision or include this under both Articles 32 and 34.

The mode of funding for the PSB does not provide for sufficient and foreseeable funding and hence does not fully support the achievement of the remit of the PSB or the possibility for strategic planning. Budget allocations should be created on a multi-year basis.

The allocation of the budget relies on annual budget negotiations and hence is not up to the standard of ensuring the avoidance of ‘potential for undue influence from yearly budget negotiations.’ (EMFA).

The Code should more clearly distinguish between public service activities and commercial activities and provide for clear accounting separation in these areas.

The Code should be brought into line with European practice that aims to ensure the political independence of the PSB/ PSM by amending Article 36 so that the governing body of the PSM appoints the Director General rather than the Parliament. The current provision is not in line with European standards and practice.

The provisions on appointment and dismissal of the Director General and of the Supervisory and Development Board should be amended according to recommendations of the legal analysts cited above in order to ensure the independence of the public service broadcaster.
There is no indication in the Code regarding the minimum qualifications required to become Director General.

There are very vague criteria applied in the case of dismissal of the Board Members including ‘on the basis of performance’. In particular, the possibility for the Assembly to dismiss the entire Board when they do not approve the Annual Report is a particularly arbitrary tool that is open to abuse and should be removed.

The Code should include references to judicial review with regard to all decisions on dismissal.
8 Other issues related to the European Media Freedom Act

8.1 Audience measurement

Article 30 of the Audiovisual Media Code addresses the issue of audience measurement:

(1) The measurement of audience shares and market shares shall be carried out by specialised institutions selected by open competition in accordance with international standards and practices.

(2) The competition stipulated in paragraph (1) shall be held at the initiative of the Audiovisual Council once every 5 years.

(3) This contest shall be organised on the basis of a regulation drawn up and approved by the Audiovisual Council, which shall ensure an open and transparent procurement process in accordance with international standards and practices in the field.

(4) Service contracts with selected specialised institutions shall oblige the specialised institutions to provide the Audiovisual Council with the results of the measurements made pursuant to this Article on a quarterly basis.

It is recommended to update this provision to reflect the standards introduced by the European Media Freedom Act. The European Media Freedom Act, among others, aims to enhance the transparency and objectivity of audience measurement systems, which have an impact on media advertising prices, in particular online.

(69) Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content. Accordingly, media market players, in particular media service providers and advertisers, should be able to rely on objective audience data stemming from transparent, unbiased and verifiable audience measurement solutions.51

A key issue, addressed under Article 24 is the requirement that: ‘Audience measurement systems and methodologies shall comply with principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability’.

In addition Article 24 (2) states that: ‘Without prejudice to the protection of undertakings’ business secrets, providers of proprietary audience measurement systems shall provide, without undue delay and free of costs, to media service providers and advertisers, as well as to third parties authorised by media service providers and advertisers, accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems’.52

The Act foresees a role for the national regulatory authorities or bodies who shall encourage the drawing up of codes of conduct by providers of audience measurement systems, together with media service providers, their representative organisations and any other interested parties, to comply with the regulation including by promoting independent and transparent audits.

8.2 State advertising

It is not clear whether there are particular rules on state advertising in the legal framework of the Republic of Moldova. State advertising does not appear to be addressed in the Law on Advertising.

The European Media Freedom Act recital emphasised that: ‘The internal market is also distorted by the opaque and unfair allocation of state advertising (i.e. public funds used for advertising purposes), which may be allocated preferentially to incumbent national service providers or used to favour and covertly subsidise certain media outlets that provide government-friendly views. The regulation in this area is fragmented and limited, with many Member States lacking specific rules and the existing rules varying in scope, to the detriment of legal certainty and with the ensuing risk of arbitrary or discriminatory decisions’.

The proposed Act defines state advertising as the following: (19) State advertising means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message or a public announcement or an information campaign, normally in return for payment or for any other consideration, by, for or on behalf of […] a public authority or entity […]

The recital also emphasises that: the definition of state advertising should not include official announcements that are justified by an overriding reason of public interest, such as emergency messages by public authorities which are necessary, for example, in cases of natural or sanitary disasters, accidents or other sudden incidents that can cause harm to individuals.

The EMFA ensures that state advertising is systematically subject to ex ante rules on transparency, notably as regards the beneficiaries and the amounts spent, and on fair allocation of such advertising. Article 25 states that ‘public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures’.53
The following information should be made public by the relevant authorities: (a) the legal names of media service providers from which advertising services were purchased; (b) the total annual amount spent as well as the amounts spent per media service provider. The proposed regulation also provides that the national regulatory authorities or bodies shall monitor the allocation of state advertising in media markets.

The European Commission 2022 Rule of Law Report also addresses State Advertising in reference to Croatia, Austria, Malta and Cyprus in relation to efforts being made in the countries to regulate, control or reduce state advertising. The results of the Media Pluralism Monitor, a comparative study covering 32 European countries indicated that state advertising ‘...remains an area of high concern and related risk for most countries encompassed by the Monitor.’ The MPM 2023 was implemented in 27 EU countries plus Albania, Montenegro, Republic of North Macedonia, Serbia and Turkey. According to the MPM 2022 findings, in countries where state advertising is regulated, the rules are stipulated in the general public procurement laws. However, even in these cases, the legal provisions ‘...do not cover all state advertising expenditure nor offer sufficient protection against preferential or biased distribution.’

8.3 Protection of journalists
The European Media Freedom Act proposes certain solutions to protect journalists and editors from undue interference and to preserve their rights to secure confidentiality of their sources of information and integrity of their communications. This protection bolsters trust in journalistic processes and promotes impartial reporting, vital for accurate news delivery which is particularly important in the national context.

Furthermore, the EMFA attempts to mitigate the risks of unjustified interference into the individual editorial decisions and to ensure that news content remains unbiased against potential political or commercial pressures. This function secures journalistic integrity and allows for reliable news dissemination which ultimately can increase the level of trust in the media and the economic position of the employees.

The EMFA also enhances the importance of the transparency of media ownership, ensuring the public’s insight into potential conflicts of interest and encouraging informed judgments about news sources. This is of crucial importance for promoting media pluralism and preventing the monopolisation of information, another important precondition for authentic audience engagement and fostering journalistic integrity.

The EMFA also aims to alleviate national restrictions on journalists’ sources and communications, enabling more effective work in gathering and disseminating information. These provisions are intended to enhance the quality and diversity of media services and to contribute to the creation of a vibrant and democratic media environment. One new issue which is introduced by this Act and which is important for securing the digital safety of journalists, is the deployment of spyware that may infringe the right to privacy of journalists and other media professionals. The key provision is Article 4

Article 4 Rights of media service providers
1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed pursuant to Union law.
2. Member States shall respect the effective editorial freedom and independence of media service providers in the exercise of their professional activities. Member States, including their national regulatory authorities and bodies, shall not interfere in or try to influence the editorial policies and editorial decisions of media service providers.
3. Member States shall ensure that journalistic sources and confidential communications are effectively protected. Member States shall not take any of the following measures:
   (a) oblige media service providers or their editorial staff to disclose information related to or capable of identifying journalistic sources or confidential communications or oblige any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have such information to disclose it;
   (b) detain, sanction, intercept or inspect media service providers or their editorial staff or subject them or their corporate or private premises to surveillance or search and seizure for the purpose of obtaining information related to or capable of identifying journalistic sources or confidential communications or detain, sanction, intercept or inspect any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have such information or subject them or their corporate or private premises to surveillance or search and seizure for the purpose of obtaining such information;
   (c) deploy intrusive surveillance software on any material, digital device, machine or tool used by media service providers, their editorial staff or any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have information related to or capable of identifying journalistic sources or confidential communications.

It is recommended to integrate these provisions in the relevant parts of the Audiovisual Media Services Code and the Law on Freedom of Information, in particular in relation to detention or surveillance, search and seizure.
Key findings and recommendations

Article 30 of the Audiovisual Media Code should be amended to reflect the principles and standards introduced by the European Media Freedom Act.

‘Audience measurement systems and methodologies shall comply with principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability’.

Article 30 should also include an obligation regarding the transparency of methodology used in audience measurement.

The regulator should encourage the drawing up of codes of conduct by providers of audience measurement systems, together with media service providers, their representative organisations and any other interested parties, to comply with the regulation including by promoting independent and transparent audits.

If not already in place, the national legislation should be amended to include the rules and principles introduced by the European Media Freedom Act with regard to State Advertising.

This requires a definition of state advertising.

The fairness of allocation, the requirement that ‘public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures’.

And the need for transparency measures: information to be made public by the relevant authorities: (a) the legal names of media service providers from which advertising services were purchased; (b) the total annual amount spent as well as the amounts spent per media service provider.

The Audiovisual Media Services Code and the Law on Freedom of Expression should be updated to reflect the European Media Freedom Act to strengthen journalistic freedom and the protection of journalists.
Endnotes

1. Audiovisual Council (2024): Audiovisual Content Regulation
2. Republic of Moldova Law on Freedom of Expression
3. Republic of Moldova Law on E-Commerce
5. Republic of Moldova LAW No. 62 of 17-03-2022 Law on Advertising
6. CDL-AD(2022)02624, Republic of Moldova, Opinion on Amendments to the Audiovisual Media Services Code and to some normative acts including the ban on symbols associated with and used in military aggression actions, adopted by the CDL-AD on 24 October 2022, accessed from the European Audiovisual Observatory, Strasbourg.
7. Legal Needs and a Roadmap for the Republic of Moldova to effectively protect its people against propaganda, manipulation, disinformation: a study, Andrei Richter, Comenius University, Slovakia. 2023 Published by Institute for Public Policy.
10. Recommendation CM/Rec(2022)16(1) of the Committee of Ministers to member States on combating hate speech was adopted by the Committee of Ministers on 20 May 2022. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955#_ftn1
12. UK Guardian Editorial code: https://www.theguardian.com/guardian/article/0.5814.642387.00.html
15. Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector: https://rm.coe.int/16804e0322.See
18. Based on a review carried out by this author for: Gap Analysis of the national legislative framework and proposed changes to the Law on Audio and Audiovisual Media Services (LAAMS) for compliance with the Audiovisual Media Services Directive (EU) 2018/1808 and relevant European standards: In the context of the project EU for Freedom of Expression: Alignment of national media legislation with EU acquis and media standards’ in North Macedonia. See also the AVMS database of the European Audiovisual Observatory for an illustration of similar provisions in all of the EU Member States. LINK
19. Directive 2010/13/EU 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) in view of changing market realities, as amended by DIRECTIVE (EU) 2018/1808.
32 Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society

33 Recommendation CM/Rec(2018)[1][1] of the Committee of Ministers to member states on media pluralism and transparency of media ownership.

34 Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda

35 Recommendation No. R (96) 10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting. https://rm.coe.int/168050c770

36 In Slovenian as amended in 2022. Zakon o Radioteleviziji Slovenija (ZRTVS-1) LINK

37 In Serbian (latin script), as amended 2022. Zakon o Javnim Medijskim Servisima LINK


39 Recommendation CM/Rec(2018)[1][1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13


41 Funding of Public Service Media. EBU Media Intelligence Service. March 2022. Public Version


46 Recommendation No. R (96) 10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting. LINK

47 Recommendation CM/Rec(2012)[1] of the Committee of Ministers to member States on public service media governance (15 February 2012) LINK


52 Ibid

53 Ibid


55 The MPM 2023: https://cmpf.eui.eu/media-pluralism-monitor-2023/