



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

Analysis of proposed amendments to the Law of Georgia “On Broadcasting”

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Contents

Conclusions and recommendations.....	3
Executive summary.....	4
Introduction.....	5
International standards.....	5
The importance of transitional provisions.....	6
The Board of Trustees of the Public Broadcaster of Georgia.....	7
The General Director of the Public Broadcaster of Georgia.....	9
Public broadcaster budget and fee, audit.....	9
The Public Broadcaster of Adjara.....	10
The National Communications Commission of Georgia and licensing activities.....	10
Transmission of broadcasting.....	10
Financing of broadcasting.....	11
Accountability and sanctions.....	12

Conclusions and Recommendations

- The amendments proposed in the draft are generally improvements to the current law, giving better guarantees for plurality by distributing the responsibility for appointment of the Board of Trustees of the Public Broadcaster between different instances and by stipulating clearer criteria for the Trustees.
- The draft amendments include quite significant changes to the Board of Trustees of the Georgian Public Broadcaster and although these are improvements compared with the current law, it is important that the transition is done in an orderly fashion. The draft amendments lack any transitional provisions, which is the main deficiency of the proposed reform.
- The amendments are not clear on the fact that not the entire Board of Trustees of the Public Broadcaster shall be replaced at the same time and as mentioned, because of the lack of transitional provisions, how and when the new Board will replace the current one.
- In some respects slightly more control of administrative matters in the Public Broadcaster is given to the Board of Trustees rather than the General Director and other managerial staff.
- Some changes are made to how tasks and duties of the Board of Trustees and the management are expressed, making such tasks and duties clearer.
- The draft amendments provide detail on the appointment of the General Director of the Public Broadcaster.
- The draft amendments undertake the reorganisation of the broadcaster of the autonomous Republic of Adjara to an autonomous part of the Georgian Public Broadcaster, as mentioned as a general plan but without detail in the current law.
- The amendments ensure must-carry provisions that are generally in line with international practice and where the main principles shall be established by agreement between the parties but where the role of the regulator in enforcing – if necessary – such agreements while not interfering excessively should be made clearer.
- International accounting standards are explicitly mentioned in the draft amendments.
- Licensees will have greater obligations for financial transparency and the amount of information to be provided by licensees is increased, which is positive as long as it does not get excessive and deter from the core activities.

- New (or clearer) proposed restrictions on public ownership of broadcasters, which should contribute to making the mechanisms of actual control over broadcasting clearer, although the provisions may need more stringent definitions.
- The possibility of appeal of sanctions is made more explicit, which is good, as it before was just covered by a general mention in relation to legal acts of the regulatory body.

Executive summary

The draft amendments make a number of alterations to the Board of Trustees of the Public Broadcaster of Georgia. These amendments are in most cases improvements that provide for better possibilities for plurality, rather than the current major role for the President in appointment of the Board of Trustees combined with a lack of clear provisions on many details of the process or the qualifications of Trustees. However, it is important that any transition to a new system is made in a gradual and orderly fashion. What is needed and what is lacking at the moment is a transitional system with provisions setting out how the change from one system to the other will be made.

The number of members of the Board of Trustees has been reduced from 15 to nine. It is better to have a smaller Board as this can be more efficient. The new draft is less clear on the fact that not all members should be changed at the same time. Previously all candidates were selected by an open competition. Under the new proposals, three will be selected by open competition managed by the Public Defender, three by the Parliamentary majority and three by the rest of the Parliament (ensuring a role for the minority). There are complex rules to ensure the proper process in Parliament, some such rules could be in other forms of regulations than the law but the main principles need to be in the law. The new proposed appointment process is more in line with practice in Europe and other parts of the world. The criteria for the Trustees have been made more specific. The dismissal procedure is amended to mirror the changed appointment procedure.

Smaller amendments are suggested to the work of the Board of Trustees. Appointment of a chairman and vice-chairman is made clearer and a possibility for removal introduced as well as a list of (normal) tasks of the chairman. The provision on the functions of the Board of Trustees is more elaborate but mainly contains the same things and some additional ones, with the new version making special mention of editorial independence.

Concerning the General Director, criteria and a procedure for the appointment is set out and the length of the mandate reduced as well as better oversight possibilities included.

A large part of the proposed amendments deal with the public service broadcaster of Adjara: to transform a previous state broadcaster to a public service one with a special status as autonomous but part of the Public Broadcaster of Georgia. The provisions are in line with best international practice. Another key element in the amendments is the introduction of a must-carry (must-transmit) obligation, based on agreement by the parties but with an obligation to agree. The obligation is in line with international standards but the provisions lack clarity for example on the role of the regulatory authority. The references to honest negotiations may be hard to apply in practice.

Other changes, such as to the budget and audit as well as of licensing activities (mainly regarding what documents shall be provided) are of a smaller nature. International accounting standards are explicitly mentioned. The amendments intend to increase transparency and are thus in line with a pluralistic media market. Restrictions are introduced on public financing of broadcasting. Such restrictions can be positive but may need more stringent definitions.

The right to appeal sanctions is made more explicit, with possibilities to demand damages.

Introduction

The Law of Georgia “On Broadcasting” ” (Georgian Legislative Bulletin, No.5, 18.01.2005, Article 19) was adopted in December 2005 and entered into force in 2005 (hereinafter referred to as “the Law” or “the Broadcasting Law”. A number of amendments to this law have been proposed in early 2013 in different draft amending acts (hereinafter collectively referred to as “the draft amendments” or “the amendments”). There are explanatory notes attached to these draft amendments that are also used for this analysis. The explanatory notes correctly analyse budgetary implications as well as the relationship to EU and international law of the proposed amendments.

This analysis examines the draft amendments and analyses these from the viewpoint of the commitments of the OSCE Office of the Representative of Freedom of the Media as well as best international and European practice. The analysis is based on the legal texts and not on an evaluation of practice or the interpretation and application of the existing law. The analysis is based on the English translations of the Law as well as of the amendments provided by the OSCE. The order of the provisions analysed is selected based on what is seen as the most suitable to give a clear overview of the substance of the various draft amendments.

International standards

The basis for the analysis is the commitment of the OSCE to freedom of expression as protected by international instruments like the Universal Declaration of Human Rights to which OSCE Participating States have declared their commitment.¹ Article 19 of the Universal Declaration says: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*²

This right is further specified and made legally binding in Article 19 of the International Covenant on Civil and Political Rights. The right is also expressed in Article 10 of the European Declaration on Human Rights:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*³

Georgia is a party to the instruments mentioned here and bound by these provisions, something reinforced by its role as a participating State of the OSCE.

¹ For example in the Helsinki Final Act (1975), Part VII. The commitment to freedom of expression has been reiterated by participating States for example in the Concluding Document of the Copenhagen Meeting of the CSCE on the Human Dimension (1990) and later statements.

² Resolution 217A (III) of the General Assembly of the United Nations, adopted on 10 December 1948. A/64, page 39-42. See the full official text in English at: <http://www.un.org/Overview/rights.html>.

³ Convention for the Protection of Human Rights and Fundamental Freedoms , Rome 4.XI.1950. www.echr.coe.int/NR/...DC13.../Convention_ENG.pdf

In the 1999 OSCE Charter for European Security the role of free and independent media an essential component of any democratic, free and open society was stressed.⁴ The Mandate of the OSCE Representative on Freedom of the Media, states:

*“Based on OSCE principles and commitments, the OSCE Representative on Freedom of the Media will observe relevant media developments in all participating States and will, on this basis, advocate and promote full compliance with OSCE principles and commitments regarding free expression and free media. In this respect he or she will assume an early-warning function. He or she will address serious problems caused by, inter alia, obstruction of media activities and unfavourable working conditions for journalists.”*⁵

As far as the issues affected by the proposed amendments to the law are concerned, the main international standards of relevance relate to public broadcasting⁶ and to some extent also to regulatory agencies⁷. The Council of Europe has issued a number of recommendations of relevance and although these are not legally binding, they do provide important guidance on how freedom of expression shall be guaranteed in reality. This includes the importance of an impartial public broadcaster and an independent regulatory agency – both with the necessary conditions for their work provided by the state.

The importance of transitional provisions

The draft amendments as specified below make a number of alterations to the governing structures of the Public Broadcaster of Georgia. These amendments are in most cases improvements that provide for better possibilities for plurality, rather than the current major role for the President in appointment of the Board of Trustees combined with a lack of clear provisions on many details of the process or the qualifications of Trustees. However, it is important that any transition to a new system is made in a gradual and orderly fashion.

What is needed and what is lacking at the moment is a transitional system with provisions setting out how the change from one system to the other will be made. As the number of Trustees is reduced, there needs to be a system for undertaking this that still preserves the possibility for the Board of working efficiently. New requirements that may not be met by existing Trustees should normally only apply to new appointees with the existing ones serving out their term or the major part of their term, although a gradual phasing out of the existing Board will be necessary as the new one is to be smaller.

The main deficiency related to the proposed amendments is the absence of transitional provisions governing the introduction of the new Board of Trustees. Even if the amendments are an improvement on the existing Broadcasting Law there is a risk that introduction of new criteria will be used to terminate the existing Board of Trustees in a precipitated and unorganised manner, which would disrupt the work of the Broadcaster.

⁴ See point 26 of the Charter for European Security, adopted at the Istanbul Summit of the OSCE, 1999. http://www.osce.org/documents/mcs/1999/11/17497_en.pdf

⁵ Mandate of the OSCE Representative on Freedom of the Media, 1997, see Point 2. <http://www.osce.org/pc/40131>

⁶ Recommendation Rec(2007)3 of the Committee of Ministers of the Council of Europe to member states on the remit of public service media in the information society; Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting (which apart from its specific subject matter, which is not of relevance to the discussion here, re-emphasizes the important role of public broadcasting).

⁷ Council of Europe Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector; Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe and Declaration of the Committee of Ministers (26 March 2008) on the independence and functions of regulatory authorities for the broadcasting sector.

The Board of Trustees of the Public Broadcaster of Georgia

One main aim of the draft amendments is to reform the Board of Trustees of the Public Broadcaster and the manner in which it is appointed. The number of members of the Board of Trustees has been reduced from 15 to nine in the draft amendments. It is better to have a smaller Board as this can be more efficient, so this is a positive suggestion. Previously all candidates were selected by an open competition. Under the new proposals, three will be selected by open competition, three by the Parliamentary majority and three by the rest of the Parliament – in practice that should mean mainly the minority. The new proposed solution is more in line with practice in Europe and other parts of the world, where it is very unusual to have a totally open appointment process. Such a process where anyone can apply may be more open to manipulation and abuse than one where there is a guarantee that different organs will be involved in selecting candidates, especially if the selection from the totally open procedure is handled by one person, the President, as in the current Georgian Broadcasting Law.

Another improvement in the draft amendments compared to the current law is that the competition is to be organised by the Public Defender instead of the President. It is better that such a competition is organised by a non-political body, for its independence as well as the important perception of independence. Also, there is a commission appointed by the Public Defender instead of as currently the President himself having the task to select among the candidates. In the proposed new system, the Public Defender can appoint some of the Trustees rather than all being appointed by Parliament. Such mixed systems are not unusual and can help ensure a de-politicized process, provided of course that the Public Defender as an office is not politicized.

Both the current and the proposed new process include provisions to ensure transparency that are strengthened in the new process. The five day period in which the Public Defender must appoint a candidate appears very short. Although it is good not to have vacancies for a long period, the deadlines set must be practical. This is however a detail and more related to the practical work organisation of the Public Defender than a point of principle.

The criteria for the Trustees have been made more specific. Instead of just a general requirement of public recognition and confidence, higher education and five year's work experience, the draft amendments require wide public acknowledgement and confidence (which is more or less the same as before), a Master's degree and ten years of work experience including five years in journalism, human rights, finances or science and pedagogy. At least one of the persons appointed by the public defender must have human rights experience. These new requirements are in line with international practice. However, it is important that such a change of requirements is not used to exclude current members that may be very good even if they lack some such qualification. The criteria should only be applied for the future, for new candidates, and not prevent existing ones from serving out their term or from being re-elected. This should be made clear in transition provisions.

As for the procedure in Parliament to select those members that are within the competence of Parliament to appoint, many of the requirements are substantially the same as those discussed above. In addition, there are special provisions to ensure that not just the parliamentary majority is involved in the process. Such guarantees are positive. The process is quite complex or at least the way in which it is described in the draft amendments is complex. Some of the detail of the process could be in another legal form than in the law as such, in order to be more easily changeable. The level of detail also makes the law hard to read and the legal form is not necessarily the best for such detail – it is better to state the framework in the law in concise language and stipulate clear rules delegating power to set out details in a regulation or other such document that can be drafted in a different manner, more suitable to lots of operational detail. At the same time, it is important that the main

provisions are in the law so that the basic functioning of the procedure with its guarantees of transparency and participation of different factions is ensured.

The draft amendments are an improvement compared with the existing rules in that instead of demanding only a certain majority in Parliament, the amendments stipulate a role for other members of Parliament than those belonging to the majority. Such explicit inclusion of the opposition is important in situations in which the ruling party has a large majority, which otherwise would mean that they could dominate the appointment process. The draft amendments try to safeguard against this.

The dismissal procedure is altered mainly as a consequence of the different appointment procedure, to mirror the fact that the President no longer holds the role he has under the current law in relation to appointment of Trustees. The criteria for possible dismissal are largely the same and are in line with international standards, also the fact that the dismissal is not too easy but requires formalities as well as a minimum number of persons raising the matter. In Parliament a vote of three-fifths of members is required for dismissal. In any case, dismissal can only be made based on the grounds listed in the law, which are in line with international standards.⁸ It does not appear as if the draft amendments open up any possibility of arbitrary dismissal of trustees and like in the current law, decisions are appealable in court. The possibility of a vote of no confidence requires a two-thirds majority in Parliament.

The new draft is less clear on the fact that not all members should be changed at the same time. Such a rule is important so that the entire Board is not new at any one time. However, it is possible that the effect will be achieved in any case, if the existing members are replaced at different times, when their respective terms end, if these terms are already running for different time periods. But in any case, it is better to state the procedure for rotation clearly in the law. Apart from this note, the draft amendments are clearer than the current law on how the procedure for appointment is handled.

The Board of Trustees according to the draft amendments shall meet once instead of twice a month, Article 28. Once a month should be sufficient and the amendments retain the possibility to call extra meetings. The accountability of the Public Broadcaster is improved in that the draft amendments give a clear possibility to call any official of the Public Broadcaster to the meeting to answer questions. As for the possibility to attend of the officials own initiative, this is substantially unchanged.

As for appointment of a chairman and vice-chairman, also these rules are clearer in the draft amendments, with a full majority of members needed (presumably what is normally called a qualified majority) instead of just a majority, Article 29. The amendments also provide for a possibility to remove the chairman, which is important and the procedure is sufficiently thorough so as not to tempt to do this too lightly. In the existing law nothing is said about possible removal. The draft amendments also set out the (normal) tasks of the chairman.

In the amended Article 30 the provision on the functions of the Board of Trustees is more elaborate but mainly contains the same things and some additional ones. The new version makes special mention of editorial independence and is more elaborate on the standards that reports shall contain. As for additional tasks given to the Board of Trustees these include approving staffing lists and salaries and defining basic employment contract terms, albeit within a framework set out in the law. What this means in practice is more control at the level of the Board of Trustees and less at the level of the Director and other managerial staff. There should not be any risk with this, but there may be a small danger that the Board of Trustees gets too involved in detail that the managerial staff may have

⁸ The word used in the draft amendments “disabled” is less suitable than the work “incapable” used in the law, but this is likely just a matter of translation. Disability may not make it impossible for a person to carry out the duties and it must be clear that only such conditions that make the person incapable are reason for dismissal.

a better overview of. If the Board of Trustees functions well and cooperates with the Director and other staff, there is no need to be too concerned about this. Only in case of conflicts between the Board and managerial staff could this lead to complicated negotiations – but in case of such a conflict that could happen also under the current law. The draft amendments mention obligations of the Trustees.

The General Director of the Public Broadcaster of Georgia

Proposed amendments to Article 32 concerning the General Director set out a procedure for the appointment, with detail on how the competition should be organised. The existing law contains no such detail. The process should guarantee transparency and there are deadlines for the various steps. The term of office is proposed to be five years instead of the current six with a possible extension (without open competition) for another six years. In the existing law there are no qualification requirements for the General Director. The amendments propose that “a candidate shall have wide public acknowledgment and confidence, Master’s or Doctor’s academic degree and at least 10 years work experience, including at least 3 years – on managerial office and at least 5 years - in the field of journalism, human rights or finances-pedagogy”. These criteria may be a bit too specific and largely the same qualifications could be asked for in a less strict manner (allowing for equivalent competence acquired by different means), but in general it is an improvement that there are some criteria set out. As for the limited term, this is something that varies between countries so no international standard can be stated. However, the existing possible 12 year period was quite long in an international comparison, especially as the second term did not require a new competition.

In Article 32¹ on terms and conditions for removal of the General Director there is a major improvement in the draft amendments. The existing law stipulates “If the initiative of the members of the Board of Trustees to express no confidence to the General Director is not voted for by the number of the members of the Board determined in Paragraph 3 of this article, it shall be impermissible to discuss the matter of no confidence to the General Director for the next 6 years.” To thus effectively exclude oversight by the Board is not in line with good administrative practice and the new proposal of a period of three months in which no new initiative can be made is a major improvement.⁹ Another clear improvement is that the draft amendments allow the General Director to attend and submit his/her opinion, which is a basic principle of good administration but does not exist under the current law.

Public Broadcaster budget and fee, audit

A small increase is suggested in the amount set aside for financing the Public Broadcaster, of 0.15% rather than as now 0.12% of the previous year’s gross domestic product (Article 33).

The Article on audit of the Public Broadcaster, Article 34, is also subject to proposed changes. According to the draft changes the auditor shall be internationally recognised and the audit shall take place once a year instead of at least once a year. The Board of Trustees rather than the General Director, in agreement with the Board of Trustees, shall appoint the auditor. There is most probably very little difference in practice as the Board of Trustees can still consult with the General Director, but the new formulation is better, as the appointment of the auditor is better done by a collegial body.

The Public Service Broadcaster of Adjara

A large part of the proposed amendments deal with the public service broadcaster of Adjara. A new chapter is added to the law about this broadcaster. In the explanatory note this is explained by underlining the principle that the country should have one public broadcaster and that it is unsuitable

⁹ As the period of six years in which no new process can be started is so extreme, this reviewer wonders if there may be a translation error and it should be six *months*. In any event, the draft amendments are an improvement.

to have a State broadcaster. Within the framework of the united public broadcaster the broadcaster of Adjara shall have an independent status.

In the existing law (Article 76 point 19), there is a mention that the Adjara broadcaster should be privatised and reorganised during a certain period (until the end of 2007). It is not known by this reviewer what if any reorganisation has been undertaken since the entry into force of that law, but the new proposed amendments appear to be in line with what is needed to transform a previous state broadcaster to a public service one. There are a number of provisions on creating a board for this broadcaster, about its mandate and so on. The provisions are in line with best international practice. In the proposed amendments the Adjara broadcaster is given a special position as a part of the Public Broadcaster of Georgia but with some autonomy. There is a proposed change to Article 17 of the Law on frequencies for the Public Broadcaster. The only substantive change suggested in the draft amendments is that the Public Broadcaster is to have four instead of three channels, which is a lot for a small country. It is up to each country to decide the number of channels but as there is cost involved and as also the Public Broadcaster competes on different conditions than private broadcasters and thus distorts the market, it is better to not have too many channels. At the same time, the main reason for this change appears to be that the Public Broadcaster of Adjara is specifically mentioned and guaranteed a frequency as well as a special status, so presumably there is actually no increase in channels but just a reorganisation as the Adjara channel is now counted among the Public Broadcaster channels.

There are no clear models for the relationship between parts of public service broadcasters in federal states or states where for other reasons there are separate branches of a public service broadcaster, as such cases are solved differently in different countries, based on the nature of the federal system, tradition, different status of the parts of the country or for other reasons. The suggested solution here, where the Adjara broadcaster is linked to the Public Broadcaster of Georgia but has a large amount of independence, appears to be an appropriate legislative solution. For example, Article 24 of the draft amendments provide that one member of the Board of Trustees of the Public Broadcaster serves as the chairperson of the Board of Trustees of the Public Broadcaster of the Autonomous Republic of Adjara. The budget of the Adjara broadcaster is part of the budget of the Georgian Public Broadcaster with a guaranteed percentage for the Adjara broadcaster. The proposed solutions appear adequate to ensure a united Public Broadcaster with some autonomy for a regional broadcaster.

The National Communications Commission of Georgia and licensing activities

Some small amendments are suggested to the tasks of the regulatory body, the National Communications Commission of Georgia. There are also detailed changes to the licensing procedure (Article 41), concerning what documentation should be submitted on property relations. These amendments can be regarded as adjustments without entailing any substantial change.

Transmission of broadcasting via cable networks

The translation of the draft amendments uses the expression “transit of broadcasting” which is not commonly used, but the meaning should be the same as transmission. In this respect new Articles are added to the law. The idea behind the suggested amendments is that there should be a right to have broadcasting channels included in the package offered to viewers in certain situations. Such provisions are common in many countries and increase the availability of programming for the viewers which evidently is positive from the diversity viewpoint. At the same time, it is important that the legislator and the regulator both are vigilant about the content and extent of such provisions, as they constitute interference in the freedom to conduct business of the owners of transmission systems. Obligations should not be too far-reaching but be proportional to the benefit achieved.

It is correct as it is suggested in the new Article 40¹ that the parties normally should agree all details between themselves and conclude the necessary contracts, which should be open to any interested parties to conclude. However, it is also important that the regulator can step in and solve disputes or offer its good services to reach an agreement, as the parties are normally not in an equal position and as they are under a legal obligation to reach an agreement so it is not a wholly normal business transaction.

Article 40¹ contains two paragraphs numbered 4. In the paragraph numbered 5, the possibility of transmitting broadcasts for free without the permission of the broadcaster is not clear. This may be a translation issue or a matter of unclear formulation. The relationship between this right to transmit without any agreement and the need to conclude agreements is not clear, whether the only difference is the question of payment or not. Generally the Article 40¹ is not well drafted and should be made clearer: setting out what obligations the parties have, the basic principle that the details shall be set out in an agreement between the parties and what intervention of the regulator that is possible in case there is no agreement. Other detail can be in regulations or other forms of secondary legislation.

The lettered points in paragraph 7 are a good attempt to describe what constitutes honest and fair negotiation, but such matters are notoriously hard to set out in a law and must remain mainly the discretion of the regulator. It is not wrong to have such a list in the law, if it is a list of examples and not an exhaustive list – such clarification should be added to the proposed amendment, through words like “including but not limited to the following behaviour” before the enumeration or “any other behaviour that jeopardizes the honest negotiations” at the end (or other words to such effect. In any event, what is missing and needs to be added is the role of the regulator to monitor and intervene if necessary.

In paragraph 9 of Article 40¹ the reference to copyright is confusing. It is not clear what “demanding protection for copyrights” means and why such mention is needed, whatever it exactly means. The copyright law applies in any event where it is relevant and intellectual property rights in relation to broadcasts are usually held by a number of persons. How this could be challenged by transmission is unclear, as the copyright legislation presumably is sufficient to stipulate that all broadcasting must be in accordance with intellectual property legislation. If it is seen to be needed to make a reference to the copyright law in this law, a simple reference is better while leaving any question of who can “demand copyright protection” to the copyright law.

Financing of broadcasting

A new Article 66¹ is proposed that prohibits administrative authorities, members of a collegial administrative authorities or public servants from financing broadcaster, from buying its services or financing or co-financing programmes. Exceptions are made in the second and third paragraphs for social advertisements and non-political information important for the society and for information related to elections. This proposed new Article suffers from two defects: the definition of who is thus prohibited from financing broadcasting is not clear, as the notion of public servant can be very wide. If the definition is found in legislation (like a public service law) a proper reference needs to be made to such a law. It is also not known if in Georgian the notion “administrative authorities” is unequivocal. The other defect is that the existing Articles 65 and 66 on social advertising and pre-election advertising appear to remain unchanged but the relationship between these articles and the new Article 66¹ is not explained. Article 67 on sponsoring has been amended but only as far as formulation is concerned, with a very small amendment in substance.

As for the content of the Article 66¹ – the ban as such – provided it is strictly defined, it is in line with international practice, as many countries ban public financing of broadcasting apart from the special case of public service broadcasters. It is however a matter of choice as countries with a free media and rule of law may also have public, municipal or other, broadcasting stations and/or

programmes. Provided there is full transparency and provided such channels are not used for political influencing, there is no inherent reason to ban this but equally, there is no need to allow such public stations. From the viewpoint of free and independent media, it is important that there is no hidden political influence of media or distortion of the market.

Accountability and sanctions

In Article 70 on accountability a reference is made to international accounting standards. The requirement of what exactly a licence holder must submit has been strengthened and in addition to submitting the material to the Commission, information must be published on the web-site. Two new paragraphs are proposed that ask for asset and liability as well as investment information to be given to the Commission as well as reports on broadcasting time, advertising etc. Reports must also be available on-line. As the current Article 70 is quite brief on what exactly the licence holders must submit, it is not clear exactly how much more is now asked from them, but clearly there is an increase in the amount of information that must be given as well as the frequency with which it shall be given.

On this matter a balance needs to be found that allows the regulator to have sufficient information to evaluate that the licence holder meet the conditions in the law and licence, while not being too burdensome for the licence holder so that they cannot carry out their core work and may be deterred from applying for a licence. Such information that is asked for in the proposed new paragraphs should be available to the licence holders and there should be no problem to provide it, but a fair determination by the regulator of what exactly should be submitted and in what form is still needed. This should fit with the proposed additions.

In Article 71 on sanctions the amendment suggested is that in a possible warning the regulator (the commission) will give a time for corrections to be made. A new paragraph is added to Article 71 with the very important improvement that it provides a possibility to appeal sanctions to a court the administrative code of procedure of Georgia. The license holder shall be authorized to demand compensation for damages for unreasonable suspension or unreasonable invalidation of the licence. In the existing law only a very general statement on legal acts of the Commission being appealable was included (Article 8), which remains unchanged after the proposed amendments. A possibility of appeal is very important and a core element of the rule of law. However, it is not necessarily so that also warnings must be appealable, as this could be seen as not being so intrusive that it falls under such matters that according to Article 6 of the European Convention on Human Rights needs to have an appeal possibility. In case of compensation, having such a possibility is positive, but the courts must exercise discretion and restraint when deciding if to award such damages, so as not to interfere with the legitimate work of the regulatory organ. Only if this body has really abused its role and not acted responsibly and this really has led to a loss for the licence holder, should there be a case for damages.