

Analysis of

The Regulation of the Supervisory Board of the National Public Audiovisual Institution- the Company "Teleradio-Moldova"

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Background

This analysis deals with the Regulation of the Supervisory Board of the National Public Broadcaster of Moldova, Teleradio – Moldova, drawn up in compliance with the Audiovisual Code of the Republic of Moldova and approved by the Supervisory Board's decision No. C.O. – 1/9 of 4 April 2007. The basis for the analysis is an English translation provided by the OSCE in September 2007.

The expert has previously analysed different versions of the Moldovan Audiovisual Code as well as the Statute of the Moldovan Public Broadcaster and of the Moldovan broadcasting regulator. Some references are made in this report to earlier suggestions. The report consists of general remarks followed by an article-by-article commentary. As the analysis is based on the English translation, no comments are made on language and terminology unless such remarks are substantially relevant or it is necessary to point out that the translation makes the substance unclear.

General Comments

It is very important that a public service broadcaster has an independent board that consists of qualified people, independent from political affiliations and with relevant professional experience. The expert has pointed this out in several previous reports. With the various legislative instruments governing the broadcasting sector in Moldova, a structure that in most respects meets with European standards has been created. The ability of the Supervisory Board of the public service broadcaster to function well is very important for the success of the broadcaster and for its chances of meeting the aims set out for it in the law. Adoption of an adequate regulation governing its tasks and working methods is an important step in the work of the Supervisory Board.

This Regulation is mainly appropriate and contains most necessary provisions. It emphasises that Board members are independent and cannot take instruction from any organisation, which is very important. Specific issues on which the Regulation could be clearer are pointed out below. In the application and interpretation of the Regulation it is important to always keep in mind that it is an implementation of the law, so all provisions must be in accordance with the law (the Broadcasting Code) and any amendments to the law. The interrelationship between different legal instruments should be as clear as possible.

Delegation of tasks

The Statute of the public service broadcaster (seen and commented upon earlier) was not very clear on the internal structure and division of competences within the broadcaster. Also this Regulation may be slightly lacking in clarity, but this may be changed later through the work of the Supervisory Board itself; the Regulation provides a basis for this work. What is not evident is the possibility to delegate powers from the Board to the President of the company or to Directors. Such possibility should exist, as it may be more efficient for certain matters to be dealt with by a Director or other staff member as part of their daily work than for the Board to have to take all decisions. For the purpose of legal clarity and security, delegation possibilities should be clearly set out as delegation should not be an erosion of powers – only

a means of exercising powers. It should also be clear when the President of the Company or Directors must consult the Board. Such rules can stipulate specific issues or contexts on which consultation should take place or demand it for contracts and other obligations concerning more than a certain amount or similar.

Relationship between different legal instruments

This Regulation implements the law (the Broadcasting Code) as well as the Statute of the public broadcaster. The role of a Regulation such as this is to enable legal instruments to function in practice. The Regulation meets this task, but the references or other links to the law are insufficient in some places. This may not be a problem initially when the different legal instruments use very similar or even identical language and may have been drafted together or at least in close conjunction. The need for proper references is still there however, as legal instruments may change and even if the law would take precedence, having different provisions on the same issue can easily lead to confusion. With proper cross-references it is easier to see what parts of the law the Regulation implements.

Transparency, ethics and other principles

The Regulation sets out that the Supervisory Board should operate under the principle of transparency. This is reflected in that its decisions as well as its meetings should be open. This is an important principle and transparent work will increase the confidence in and respect for this body. At the same time, there will be cases when the Board will deal with information that should not be publicly available, so there is a need for rules on what material can be kept confidential as well as a procedure for having parts of meetings closed to the public. Rules on this should be drawn up in some form, if not as part of this Regulation then in a separate rule.

A separate Code of Ethics could be drawn up to give further detail and emphasis to ethical principles that are set out e.g. in the Statute of the public broadcaster. Whether the same ethical rules apply to the Supervisory Board members or if there should be special rules is a matter of choice, but ethical rules should apply and be enforced also against the Board members. Matters mentioned in the Statute such as accepting of gifts, etc, can be relevant also for the Board. The Commission of Ethics mentioned in the Statute could have some role also in relation to the Board if this body is independent from the Board.

Transformation of previous body

As has been pointed out in earlier reports, the transformation from previously existing public broadcaster(s) into this public service broadcaster has been insufficiently dealt with in the law or other documents. It is possible separate instruments exist on this, which is not a problem, provided the transfer of assets is clear as well as any issue of responsibilities of different organs. It is presumed that there is no pre-existing Board that the Supervisory Board is a continuation of, but that any transition issues are dealt with separately. If not, references should be made to whatever other instruments that deals with the previous body and the transition between the two.

Article-by-Article comments

**The Regulation of the Supervisory Board of the National Public Audiovisual Institution- the Company
“Teleradio-Moldova”
(approved by the Supervisory Board’s decision No. C.O. – 1/9 of 04.04.2007)**

The present regulation is drawn up in compliance with the Broadcasting Code of the Republic of Moldova No. 260 of 27.07.2006 and sets the way of organizing, functioning and exercising the duties, as well as the rights and obligations of the Supervisory Board of the National Public Audiovisual Institution – the Company

“Teleradio Moldova” (hereinafter referred to as Supervisory Board).

I. General Provisions

1. The Supervisory Board is an autonomous management body of the National Public Audiovisual Institution – the Company “Teleradio-Moldova” (hereinafter referred to as the Company), aimed at ensuring the observance of citizens’ and society’s right to receive accurate, complete and operative information, being entitled to monitor the observance of legal and statutory provisions by the Company.
2. The Supervisory Board operates in accordance with the Constitution, the Broadcasting Code, the present regulation and other normative documents, as well as other international documents to which the Republic of Moldova is party.
3. The Supervisory Board has a name in the state language and a heading containing the state coat of arms.
4. The headquarters of the Supervisory Board are in Chisinau Municipality, address: 1 Miorita str., Chisinau.

II. Working Principles

5. The Supervisory Board is composed of nine members, appointed by the Parliament of the Republic of Moldova for a 4-year term, in compliance with the provisions of art. 56 of the Broadcasting Code. The structure of the Supervisory Board, terms of appointment and dismissal of its members, as well as the incompatibilities are mentioned in paragraph VI.

For clarity, also when mentioning the terms of appointment and dismissal, a reference could be made to the law as the substance of such provisions is found there and not just in this Regulation.

6. The members of the Supervisory Board do not represent the interests of the authorities they were appointed by. The members of the Supervisory Board declare, in written form, that they are not affiliated to a political party or that they have ceased their activity in the party they belonged to, within a month from the first meeting of the Supervisory Board.

This is good, it is important to make clear that the members do not represent any bodies or special interests even if they were appointed on the nomination of some organization.

7. Supervisory Board’s activity is based on the principle of transparency. This principle is not applied in case of secret or confidential information or materials.

There is a need to specify what is secret and confidential in order for this exception from the important principle of transparency not to be abused. Ideally, a specific regulation would set out what types of documents and/or what type of information can be secret as well as the procedure for determining if something is secret. There could be certain persons authorized to decide about secrecy for example. Information that should not be publicly available contains business secrets of companies, certain personal information about employees or others as well as anything that may have security or law-enforcement relevance.

8. The Supervisory Board ensures the Company’s objectives accomplishment, as long as this strengthens its functional autonomy and editorial independence.
9. The Supervisory Board supervises the observance of legal framework on public service broadcasting activity by the company’s administration and staff, as a guarantor of correct enforcement of the present legislation in the Company’s activity. The Board’s decisions on issues related to its duties are compulsory for the Company’s administration.
10. The Supervisory Board carries out its activity in accordance with democratic values principles of strengthening the Republic of Moldova statehood and of integration in European structures, with main tasks as the observance of public interest, promotion and protection of Company’s editorial policy independence and diversity.
11. The Supervisory Board participates in the process of monitoring the aspects related to observance of the ethic norms by the Company’s staff, as well to balance and diversity preservation within broadcasted programs content.

A separate code of ethics would be good. As for programming content, even if the Board does have an ultimate responsibility for ensuring that programming principles are met, the structure of the public service broadcaster should ensure that this is normally taken into account by the

normal structures in the company, as part of daily work of editors and other staff involved in programming matters (meaning that the Board should normally not have to intervene, just monitor generally).

12. The Supervisory Board's activity is assisted by the president and the secretary.
13. The Supervisory Board can be assisted by an assistant, as the case may be.

III. Foundation of the Supervisory Board

14. The Supervisory Board is convened in the foundation sitting at the most 30 days from the date when the candidates were appointed by the Parliament.

No problem with this provision as such, but the question arises what happens if no Board has been appointed within this period? This is also linked to the issue pointed out elsewhere (in this and other reports) that it is unclear how the transition from any previously existing state broadcaster will take place. (This issue may be regulated in a separate instrument.)

15. As a rule, at the first sitting, the members of the Supervisory Board elect its president and secretary. Why the words "as a rule"? This is something they should do. (In English, the words "as a rule", used in this way, indicate that this is what usually should happen but there could be exceptions. It is possible this is just a translation issue.)
16. The Supervisory Board' sittings are deliberative when at least 2/3 of its members are present. The decisions are adopted with majority of votes of the present members. In case of vote parity, the issue will be voted not later than next sitting.

This could be cumbersome if there is something on which a quicker decision is needed. A casting vote for the chairman is a normal solution. For certain issue, a majority of 2/3 of Members of the Supervisory Board are needed (not just 2/3 of those present), this is mentioned below and set out in several places in the Statute.

IV. The Structure of the Supervisory Board. Terms of Members Appointment and Dismissal.

Incompatibilities

17. The Supervisory Board is composed of nine members, public individuals with professional qualifications in different fields such as culture, arts, cinematography, journalism, law, financial and commercial enterprise management, public relations, international relations, academia, mass media, and engineering.

This must always be in accordance with the law, so a reference to the law could be made (also here, even if it is also mentioned above). This is important as if the law were to change, also this must change.

18. Requirements and incompatibilities.

In order to be able to run for the position of member of the Supervisory Board an individual has to meet the following requirements:

- a) he/she is a citizen of the Republic of Moldova;
- b) he/she has high education in one of the fields listed in item 17;
- c) he/she knows the state language of Republic of Moldova;
- d) he/she does not have a criminal record.

19. The position of member of the Supervisory Board is incompatible with:

- a) membership in the Parliament;
- b) membership in the Government;
- c) membership in the Audiovisual Coordinating Council;
- d) direct or indirect ownership of shares or parts of statutory capital in commercial companies operating in fields that could generate a conflict of interests with the status of Supervisory Board member;
- e) being an employee of the company;
- f) being member of a party.

Good provisions but again the compatibility with the law is essential. In case of discrepancy between the law and this Regulation, the law will have precedence – if the Regulation is a way of interpreting and giving more substance to the law, it must in any case always be interpreted in light of the law.

20. In case of a vacancy, at the most in 30 days, the Supervisory Board will ask the Parliament of the Republic of Moldova to appoint a new member for the period left till the mandate expires. The Supervisory Board members that, before their appointment, had worked within public service and ceased their activity, continue to have social guarantees in compliance with the public service law.

V. Voting Procedure within Supervisory Board's meetings

21. The president of the meeting proposes the voting method (open or secret vote). The members of the Supervisory Board decide on the method to be used. The votes are expressed in the following way: "for" or "against".

22. The open vote is expressed by hand raising or by nominal vote (or roll-call vote). The president clearly words the issue to be voted before voting. The secretary of the session counts the votes and includes them in the minutes, and the president announces the results of voting.

23. When the Supervisory Board has to make an appointment and the members of the Council opted for open vote, the president proposes to establish the mechanism for candidates putting forward, and it is submitted to voting. The president of the meeting announces the position for which candidatures are to be put up. The secretary of the meeting registers the candidatures. Each candidacy is voted separately following the order it was proposed. The secretary counts the votes, announces them and ensures their registering in the session's minutes, and the president announces the results of voting. The candidate who gathers 2/3 of votes of the members of the Supervisory Board is declared elected.

What kind of candidates will the board vote on? Often votes on personal issues are closed but this is something the Board can decide upon itself.

24. If none of the candidates gathers the necessary number of votes or in case of vote parity, the second round of election is organized with the participation of just two candidates that gathered the biggest number of votes in the first round of elections. Exception is the situation when several candidates get on the second place with an equal number of votes and they are allowed to participate in the second round. The second round of election takes place in the same conditions as the first one. The candidate who gathers 2/3 of votes of the Supervisory Board members is declared elected.

25. The nominal vote is performed in the following way:

a) The president clearly words the issue to be voted;

b) The secretary, who, beforehand, drew up the list of the Supervisory Board, reads members' names and surnames (in alphabetic order);

c) Hearing his/her name, the member of the Board answers "for" or "against". The secretary registers it in the list;

d) after the roll call, the secretary repeats names and surnames of the members who did not answer, and in case they did not cast their votes, the secretary writes "did not vote", signs the list and passes it to the president;

e) The president of the meeting announces the results of voting and signs the list that is attached to the minute on the meeting;

f) When a repeated voting is necessary due to the voting results, it is carried out in compliance with the letters a) and e) of the present item.

26. In case of a secret voting, the election is carried out with voting ballots that contain the candidates names and surnames, or the clear and concise wording of the problem (or problems). If the members of the Supervisory Board have to appoint candidates to different positions, the election is carried out with separate ballots (depending upon the position the candidates run for).

27. The place chosen for voting should ensure voting confidentiality. Voting ballots are put in the same ballot box. It is forbidden to take the ballot out the place where the voting procedure unfolds.

28. The candidates who gathered the necessary number of votes are declared elected. In case of vote parity or if none of the candidates gathered the necessary numbers of votes, the second round of elections is organized with the participation of those candidates that managed to gather the biggest number of votes in the first round of election.

29. On the basis of the information presented by the special commission, the members of the Supervisory Board adopt a decision that confirms the results of elections.

What is the special commission? It is not mentioned earlier.

30. During voting, the members of the Supervisory Board can not take the floor and no comments are accepted.

The Statute and also these provisions here (although not so clearly) stipulate that for some votes (like dismissal of Directors) 2/3 of Supervisory Board members have to vote in favour. This will affect voting if not all members are present and may lead to it being impossible to reach a concluding vote. Just in order not to forget this possible complication, some mention could be made. (If enough members for a quorum but not all are present, it will not be know until they have voted if there was a 2/3 majority of all members for a proposal.)

VI. Elections, Appointments, Confirmations, Discharges and Dismissals

31. The election or dismissal of the president of the Supervisory Board is carried out through an open or secret vote, with the simple majority of votes of the members of the Supervisory Board. The vote of no confidence,

given by the majority of the members of the Supervisory Board can be the reason to initiate the reelection procedure of the president or secretary of the Supervisory Board at the next meeting.

Any procedures for how this vote of no confidence takes place?

32. If the post of president or secretary becomes vacant, elections for the respective position are to be held. The newly elected candidate will carry out his/her duties for the period left until the Supervisory Board mandate expires.

33. The president of the Company is appointed on contest basis by the Supervisory Board, for a maximum 5-year term.

Consistency with the law as well as the Statute is essential, references would be good.

34. The president of the Company can be dismissed by the Supervisory Board in the following cases:

- ignores repeatedly the Supervisory Board's notices;
- does not carry out the performances established and accepted by the Supervisory Board at his appointment;
- the Public Company does not register significant progress within six months from his appointment;
- is unable to manage the internal crisis of the Company, including those in relation to its employees;
- is involved in activities that harm the public service broadcaster's authority (embezzlements, favoring some parties to the detriment of others etc.)

Some of this is quite hard on the President! For example measuring significant progress may be difficult. At the same time, it is OK to have what can be seen as a trial period for the President, which is what this actually amounts to. However, in the Statute (the version this expert earlier did a report on) there are special rules on how and when the President can be dismissed, for example a special majority in the Board is required. The reasons for dismissal are also different. It is important that this is brought into line; the Regulation can give more detail on especially procedures but should not set out different rules. The Statute also declares that the Board in case of dismissal appoints a new person to carry out the functions and this is the kind of issue on which there could be a mention here in the Regulation, with any procedural rules for such appointment.

VII. Organization of the Supervisory Board's Activity

35. Any problem that come within the Supervisory Board's province, proposed by its members, will be examined within the working sittings.

36. As a rule, the working sittings are convened by the president of the Supervisory Board at least once in a month. The agenda of the sitting and the necessary materials are provided in written form to the Supervisory Board members at least 3 days before the sitting, with all the materials included on the agenda attached before the date when the sitting is to take place.

37. The sittings can be convened by the president, secretary or at the written request of at least 1/3 of the members of the Board. The date and the time when the sitting of the Supervisory Board is to be organized will be announced in written form three days before.

38. The sittings of the Supervisory Board are public.

The Board will have to have the possibility of having part of the meeting secret.

39. Minutes are prepared at the sittings of the Supervisory Board, that will be sent to each member within 6 days, and afterwards signed by all the members of the Supervisory Board present at the session.

40. As a result of the Supervisory Board's activity, decisions, resolutions, recommendations, addressings, reports, answers to requests, as well as other documents can be adopted within the sessions, as the case may be. The documents adopted by the Supervisory Board will contain the majority's opinions, but, on request, it can also contain separate opinions of other members.

Such documents should be public.

41. Invited persons can take the floor at the session, without getting involved in the Supervisory Board's activity.

It should be clear that the Board decides whom to invite and if and when to give them the floor.

VIII. Supervisory Board's Functions

42. The Supervisory Board has the following functions:

- A) approves its own Regulation and amends it;
- b) approves the company's statute and amendments to it;
- c) approves the work plan of the company, which includes the financial plan and the editorial policy of the company;
- d) assesses the performance of the company and its management, publishing annual reports and

recommendations;

e) approves the establishment, reorganization or termination of the company's subdivisions, including its territorial offices;

f) organizes public meetings with representatives of different groups of audience from the Republic of Moldova aimed at performing audience researches;

g) appoints, on a contest basis, the president of the company, the radio director and the television director;

h) informs, ex officio and on request, about the infringements of the Broadcasting Code and other laws in force, committed by the company, forwarding the president notifications to abide by law.

How does this fit with the role of the regulatory body?

i) appoints and dismisses its members from the position of president and secretary of the Supervisory Board;

j) appoints and dismisses the president of the company;

k) dismisses, at the request of the Company's president, radio director and television director;

l) establishes the salary schedule for the company's employees;

m) approves the draft budget of the company, including the operational fund for the Supervisory Board's activity;

n) supervises the observance of legal and statutory provision by the company, as well as other bylaws, that regulate the company's activity in compliance with the law.

o) examines issues related to creation activity and broadcasting schedule of the company, involving, as the case may be, local and foreign experts and ensuring their proper remuneration from the company's budgetary fund;

The board should not get involved in editorial matters other than in a supervisory function.

p) examines series of programs or separate programs and synthesizes the company's activity, forwarding to the company's administration proper recommendations;

q) the company can carry out transactions that involve acquisition or termination of stocks in a company with the Supervisory Board's consent; the acquisition, transfer or termination of a company's activity; mortgaging or transfer of registered real estate or securities; as well as to borrow financial means;

r) at the end of each calendar year, the Supervisory Board presents a public activity report for the respective year. The activity report cannot be submitted later than 15 February of the year to come.

Who is the report submitted to?

This article appears not to be the same as the list of functions in the Statute. Although it possible to give more detail here, it is important to ensure that there is no substantial discrepancy.

43. The president of the Supervisory Board:

a) executes representative functions with the consent of the members of the Supervisory Board;

b) signs collaboration agreements, on behalf of the Supervisory Board, having the Supervisory Board's decision;

c) represents the Board's interests in law courts;

The provision in itself is fine, just to point out that it is important that the division between representing the Board's interests and the interests of the Company should be clear, as this is done by different individuals.

d) convenes and chairs the Board sittings;

e) signs decisions and other documents of the Board, ensuring their execution;

f) coordinates the priorities of the Supervisory Board;

44. The secretary of the Supervisory Board:

a) ensures elaboration, editing and spreading of all operative materials in the due time;

b) countersigns the decisions and other documents of the Supervisory Board, as the case may be;

c) counts the votes within the sittings;

d) carries out secretarial work.

IX. Funding of the Supervisory Board's Activity

45. The Supervisory Board's activity is financed by the Company's budget.

46. The Supervisory Board carries out its activity without remuneration, except for the secretary paid by the company. The size of the secretary's remuneration is established by the Board.

47. The other members of the Supervisory Board receive from the company a payment in amount of 20% of the company president's monthly salary. The remuneration received by the member of the Supervisory Board during 30 days cannot exceed 50% of the salary of the Company's President.

These two articles appear contradictory: are they paid or not?

48. The spending of the Supervisory Board is accessible and transparent. The quarterly reports on the incurred spending will be published on the company's site.

X. The Relation of the Supervisory Board with Public Authorities, Organizations and Associations

49. Public authorities of any level, organizations, political parties, public associations, religious groups, other citizens associations with a corporative interest can submit suggestions, opinions etc. to the Supervisory Board, but they do not have the right to interfere in its activity.

Most importantly, the Board cannot take any instruction from anyone.

50. The Supervisory Board answers to written interpellations within maximum 30 days from the date when they were presented.

It is good to have a limit for how much time can be taken for the answer, but in some instances the only answer that can initially be given is that the matter is under investigation – if it takes more than 30 days to investigate a certain issue.

XI. Vacancy of the Position of the Member of the Supervisory Board

51. The position of member of the Supervisory Board becomes vacant in case of:

- a) resignation;
- b) mandate expiration;
- c) conviction through final court decision;
- d) loss of Republic of Moldova citizenship;

Which should only happen through a voluntary act of the person.

- e) mental or physical incapacity.

It is not clear what happens in case of vacancy.